

**MONTANA
MONITORING
STANDARDS FOR
JUVENILES IN
CUSTODY OF**



**LICENSED JUVENILE AND
COLLOCATED DETENTION
FACILITIES**

A GUIDE TO COMPLIANCE WITH:
THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION
ACT OF 2002
AND THE MONTANA YOUTH COURT ACT

Updated December 2005

INTRODUCTION

This handbook has been developed to acquaint juvenile justice professionals with both the Juvenile Justice and Delinquency Prevention Act of 2002 as Amended (JJDP Act) and the corresponding Youth Court Act, Montana Code Annotated (MCA) Title 41, Chapter 5. This information will enable those involved in the juvenile detention arena with maintaining compliance with both the state's Youth Court Act and the federal JJDP Act regarding the processing and holding of juveniles.

As a participant in the Juvenile Justice and Delinquency Prevention Act, Montana must maintain and monitor compliance with the core requirements of the JJDP Act. The Montana Board of Crime Control Juvenile Justice Program is the state agency designated to administer federal JJDP ACT funds and provide staff support to the Youth Justice Council (YJC). Working in conjunction with the YJC and other juvenile justice system members, the state Juvenile Justice Specialist provides the leadership necessary to coordinate the JJDP ACT and juvenile justice efforts. The Juvenile Justice Planner coordinates the compliance efforts. The Data Technician collects the data.

Montana receives JJDP ACT funds annually, dependent upon compliance with the core requirements of the JJDP ACT. The core requirements, explained further in this manual, have become tenants for basic professional practice throughout the country. These funds and additional grants from the State General Fund as described in Part 19 of the Youth Court Act are available to every community in Montana that reports crime data to the Board of Crime Control and maintain compliance with both the JJDP Act and the Youth Court Act. It is incumbent upon all communities to assist the state in maintaining compliance to retain these funds for juvenile justice programming.

For more information on Montana's involvement with the Juvenile Justice and Delinquency Prevention Act, please contact:

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DEFINITIONS

The definitions from the Federal Formula Grant Regulations, the Juvenile Justice and Delinquency Prevention Act, and the OJJDP Guidance Manual will take precedence over state definitions and will be used for monitoring purposes. Citations follow with corresponding definitions in the Montana Code Annotated (MCA) if any, referenced in blue.

Adjudicated youth¹. A youth that has been found, under formal proceedings by a judge, to have committed an offense. (MCA 41-5-103(11) [Delinquent youth](#))

Adult inmate. (42 U. S. C. 5603 Sec 103(26)) An individual who has reached the age of full criminal responsibility under applicable state law and has been arrested and is in custody for or awaiting trial on a criminal charge, or is convicted of a criminal offense. (MCA 41-5-103(1) [Adult](#))

Adult jail (28 CFR 31.304(m)). *A locked facility, administered by State, county, or local law enforcement and correctional agencies, the purpose of which is to detain adults charged with violating criminal law, pending trial. Also considered as adult jails are those facilities used to hold convicted adult criminal offenders sentenced for less than 1 year.* (MCA 41-5-103(23) [Jail](#))

Adult lockup (28CFR 31.304(n)). *Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature that does not hold person after they have been formally charged.* (MCA 41-5-103(23) [Jail](#))

Civil-type juvenile offender. A juvenile offender who has been charged with or adjudicated for an offense that is civil in nature. Examples include non-criminal² traffic violations and noncriminal fish and game violations. (MCA 41-5-103(50) [Youth in need of intervention](#))

Collocated facility. A collocated facility is a juvenile facility that is located in the same building as an adult jail or lockup or is part of a related complex of buildings located on the same grounds as an adult jail or lockup. A complex of buildings is considered “related” when it shares physical features such as walls and fences or services beyond mechanical services (heating, air conditioning, water and sewer). Each of the following four criteria must be met in order to ensure the requisite separateness of a juvenile detention facility that is collocated with an adult jail or lockup:

1. The facility must ensure separation between juveniles and adults such that there could be no sustained sight or sound contact between juveniles and

¹ A youth committed to the Department of Corrections, released on parole and subsequently picked up and held for violation of a parole (aftercare) agreement or escape under MCA 52-5-128 is considered an adjudicated youth and may not be securely held in an adult jail, lockup, or unapproved collocated facility for any length of time.

² In Montana, all youth taken into custody are under the jurisdiction of the Youth District Court, however, District Court does not have concurrent jurisdiction for traffic offenses, even if they are criminal. Therefore, secure detention of youth for a traffic offense of any kind is a violation of the Youth Court Act.

- incarcerated adults in the facility. Separation can be achieved architecturally or through time phasing of common use nonresidential areas; and
2. The facility must have separate juvenile and adult program areas, including recreation, education, vocation, counseling, dining, sleeping, and general living activities. There must be an independent and comprehensive operational plan for the juvenile detention facility that provides for a full range of separate program services. No program activities may be shared by juveniles and incarcerated adults. Time phasing of common use non-residential areas is permissible to conduct program activities. Equipment and other resources may be used by both populations subject to security concerns; and
 3. The facility must have separate staff for the juvenile and adult populations, including management, security, and direct care staff. Staff providing specialized services (e.g., medical care, food service, laundry, maintenance, and engineering) who are not normally in contact with detainees or whose infrequent contacts occur under conditions of separation of juveniles and adults can serve both populations (subject to State standards or licensing requirements). The day-to-day management, security, and direct care functions of the juvenile detention center must be vested in a totally separate staff, dedicated solely to the juvenile population within the collocated facilities; and
 4. In States that have established standards or licensing requirements for juvenile detention facilities, the juvenile facility must meet the standards on the same basis as a freestanding juvenile detention center, and be licensed as appropriate. If there are no State standards or licensing requirements, OJJDP encourages States to establish administrative requirements that authorize the State to review the facility's physical plant, staffing patterns, and programs in order to approve the collocated facility based on prevailing national juvenile detention standards.

The State must determine that the four criteria are fully met. It is incumbent upon the State to make the determination through an onsite facility (or full construction and operations plan) review and, through the exercise of its oversight responsibility, to ensure that the separate character of the juvenile detention facility is maintained by continuing to fully meet the four criteria set forth above. (28 CFR 31.303(e)(3)(i)(A)) [MCA 41-5-103\(49\)\(a\)\(ii\) Collocated facility](#)

Contact (DMC). See Disproportionate Minority Contact below.

Contact (sight and sound) (28 CFR 31.303(d)). Any physical or sustained sight and sound contact between juvenile offenders in a secure custody status and incarcerated adults, including inmate trustees. Sight contact is defined as clear visual contact between incarcerated adults, including inmate trustees. Sight contact is defined as clear visual contact between incarcerated adults and juveniles within close proximity to each other. Sound contact is defined as direct oral communication between

incarcerated adults and juvenile offenders. ([MCA 41-5-349\(3\)\(c\) Youth not to be detained in jail – exceptions – time limitations](#))

Court holding facility (Page 53, *Guidance Manual for Monitoring Facilities Under the JJDP Act*). A court holding facility is a secure, non-residential facility, that is not an adult jail or lockup, that is used to temporarily detain persons immediately before or after court proceedings. (**CAUTION:** Do **not** confuse this with the non-secure holdover described in [MCA 41-5-103\(23\)](#))

Criminal type juvenile offender (28 CFR 31-304(g)). A juvenile offender who has been charged with or adjudicated for conduct that would, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult. **Caution:** The JJDP Act does not allow a status offender to be upgraded to a delinquent offender on the basis of criminal contempt. (Reference page 20 of OJJDP’s *Guidance Manual “Monitoring Facilities Under the Juvenile Justice and Delinquency Prevention Act of 1974, as Amended”*). ([MCA 41-5-103 \(11\) Delinquent youth](#))

Delayed egress device. A device that precludes the use of exits for a predetermined period of time.

Disproportionate Minority Contact (DMC). (42 U. S. C. 5633 Sec. 223(a)(22)). As amended by the JJDP Act of 2002, the concept of disproportionate minority confinement has been broadened to address the disproportionate numbers of minority youth who come into contact with the juvenile justice system at any point. The 2002 Act requires states to “address juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of the minority groups, who come into contact with the juvenile justice system.”

Facility (28 CFR 31.304.(c)). A place, an institution, a building or part thereof, set of buildings, or an area whether or not enclosing a building or set of buildings which is used for the lawful custody and treatment of juveniles and may be owned and/or operated by public and private agencies.

Juvenile offender (28 CFR 31.304(f)). An individual subject to the exercise of juvenile court jurisdiction for purposes of adjudication and treatment based on age and offense limitations as defined by State law, i.e., a criminal-type offender or a status offender. ([MCA 41-5-103 \(11\) Delinquent youth](#) or [MCA 41-5-103 \(50\) Youth in need of intervention](#))

Juvenile who is accused of having committed an offense (28 CFR 31.304(d)). A juvenile with respect to whom a petition has been filed in the juvenile court or other action has occurred alleging that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender, and no final adjudication has been made by the juvenile court.

Juvenile who has been adjudicated as having committed an offense (28 CFR 31.304(e)). A juvenile with respect to whom the juvenile court has determined that such juvenile is a juvenile offender, i.e., a criminal-type offender or a status offender. (MCA 41-5-103 (11) Delinquent youth or MCA 41-5-103 (50) Youth in need of intervention)

Lawful custody (28 CFR 31.304(j)). The exercise of care, supervision, and control over a juvenile offender or non-offender pursuant to the provisions of the law or of a judicial order or decree. (MCA 41-5-321 Taking into custody)

Non-offender (28 CFR 31.304(i)). A juvenile who is subject to the jurisdiction of the juvenile court, usually under abuse, dependency, or neglect statutes, for reasons other than legally prohibited conduct of the juvenile. (MCA 41-3-102 (29) Youth in need of care)

Non-secure custody. A juvenile may be in law enforcement custody and, therefore, not free to leave or depart from the presence of a law enforcement officer or at liberty to leave the premises of a law enforcement facility, but not be in a secure detention or confinement status. The November 2, 1988, *Federal Register* announcement, *Policy Guidance for Nonsecure Custody of Juveniles in Adult Jails and Lockups; Notice of Final Policy*, states that the following policy criteria, if satisfied, will constitute non-secure custody of a juvenile in an adult jail or lockup facility:

- The area(s) where the juvenile is held is an unlocked multipurpose area, such as a lobby, office, or interrogation room which is not designated, set aside, or used as a secure detention area or is not part of such an area, or if a secure area, is used only for processing purposes;
- The juvenile is not physically secured to a cuffing rail or other stationary object during the period of custody in the facility;
- The use of the area(s) is limited to providing non-secure custody only long enough for and for the purposes of identification, investigation, processing, release to parents, or arranging transfer to an appropriate juvenile facility or to court;
- In no event can the area be designed or intended to be used for residential purposes; and
- The juvenile must be under continuous visual supervision by a law enforcement officer or facility staff during the period of time that he or she is in non-secure custody.

In addition, a juvenile placed in the following situations would be considered in a non-secure status:

- If certain criteria are met, a juvenile handcuffed to a non-stationary object: Handcuffing techniques that do not involve cuffing rails or other stationary objects area considered non-secure if the five criteria listed above are adhered to.

- If certain criteria are met, a juvenile being processed through a secure booking area: Where a secure booking area is all that is available, and continuous visual supervision is provided throughout the booking process, and the juvenile remains in the booking area only long enough to be photographed and fingerprinted (consistent with State law and/or judicial rules), the juvenile is not considered to be in a secure detention status. Continued non-secure custody for the purposes of interrogation, contacting parents, or arranging an alternative placement must occur outside the booking area.
- A juvenile placed in a secure police car for transportation: The JJDP Act applies to secure detention facilities and secure correctional facilities, so a juvenile placed in a secure police car for transportation would be in a non-secure status.
- A juvenile placed in a non-secure runaway shelter, but prevented from leaving due to staff restricting access to exits: A facility may be non-secure if physical restriction of movement or activity is provided solely through facility staff.

Other individual accused of having committed a criminal offense (28 U. S. C. 31.304(k)). An individual, adult or juvenile, who has been charged with committing a criminal offense in a court exercising criminal jurisdiction. ([MCA 41-5-206\(7\) Filing in district court prior to formal proceedings in youth court](#))

Other individual convicted of a criminal offense (28 CFR 31.304(l)). An individual, adult or juvenile, who has been convicted of a criminal offense by a court exercising criminal jurisdiction. ([MCA 41-5-103 \(9\) criminally convicted youth](#))

Private agency. A private non-profit agency, organization or institution is:

- (A) Any corporation, foundation, trust, association, cooperative, or accredited institution of higher education not under public supervision or control; or
- (B) Any other agency, organization or institution which operates primarily for scientific, education, charitable service or similar public purposes, but which is not under public supervision or control, and no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and which has been held by IRS to be tax exempt under the provisions of section 501 (c) (3) of the 1954 Internal Revenue Code (28 CFR 31.304(a)).

Public agency. Any State, unit of local government, combination of such States or units, or any department, agency or instrumentality of any of the foregoing (42 USC 5603 Sec. 103(11)).

Reasonable cause hearing (42 U. S. C. 5633 Sec. 223(a)(23)(C)(ii)). In the context of the VCO Exception, the reasonable cause hearing (also referred to as a “probable cause hearing” or “preliminary hearing”) is a court proceeding held by a judge to determine whether there is sufficient cause to believe that a juvenile status offender accused of violating a valid court order has violated such an order and to determine the

appropriate placement of such juvenile pending disposition of the violation alleged. ([MCA 41-4-332 Custody—hearing for probable cause.](#))

Related complex of buildings (42 U. S. C. 5603 Sec. 103(28)) 2 or more buildings that share physical features such as walls and fences, or services beyond mechanical services (heating, air conditioning, water and sewer); or the specialized services such as medical care, food service, laundry, maintenance, engineering services, etc.

Secure Custody (28 CFR 31.304(b)). As used to define a detention or correctional facility, this term includes residential features designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures. It does not include facilities where physical restriction of movement or activity is provided solely through facility staff.

Secure juvenile detention center or correctional facility (28 CFR 31.303(n)(f)(2)). A secure juvenile detention or correctional facility is any secure public or private facility used for the lawful custody of accused or adjudicated juvenile offenders or nonoffenders. ([MCA 41-5-103 \(15\) Detention facility](#), [41-5-103\(32\) Regional detention facility](#), [41-5-103\(35\) Secure detention facility](#), [41-5-103\(39\) Short term detention center](#), [41-5-103\(40\) State youth correctional facility](#), and [41-5-103\(49\) Youth detention facility](#)).

Staff secure facility. A staff secure facility may be defined as a residential facility (1) which does not include construction features designed to physically restrict the movements and activities of juveniles who are in custody therein; (2) which may establish reasonable rules restricting entrance to and egress from the facility; and (3) in which the movements and activities of individual juvenile residents may, for treatment purposes, be restricted or subject to control through the use of intensive staff supervision. ([MCA 41-5-103 \(22\) Holdover](#), and [41-5-103 \(38\) Shelter care facility](#))

Stationary. Not capable of being moved by a juvenile.

Status offender (28 CFR 31.304(h)). A juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult. The following are examples of status offenses:

- Truancy
- Violations of Curfew
- Unruly
- Runaway
- Underage possession and/or consumption of tobacco products
- Underage possession and/or consumption of alcohol. This offense is always considered a status offense, even though State or local law may consider it a criminal-type offense for a small portion of the adult population. Where it is a criminal-type offense for all adults as on some reservations, then it is a delinquent offense. ([MCA 41-5-103 \(50\) Youth in need of intervention](#))

Valid Court Order (VCO). The term means a court order given by a juvenile court judge to a juvenile who has been brought before the court and made subject to a court order. The use of the word “valid” permits the incarceration of juveniles for violation of a valid court order only if they received their full due process rights as guaranteed by the Constitution of the United States (28 CFR 31.304(o)). (Reference “Summary of the Valid Court Order (VCO) Process” attached and second paragraph page 23 federal guidelines manual re: state common laws and use of traditional contempt). ***(Note: Montana’s court order process does not meet the federal standard for a valid court order process. Since 2003, Montana law does not allow for incarceration of youth in need of intervention who violate a court order.)*** *MCA 41-5-103(11) Delinquent youth; 41-5-341(2) Criteria for placement of youth in secure detention facilities; 41-5-345 Limitation on placement of youth in need of intervention; 41-5-349(2) Exceptions of youth not to be detained in jail, 41-5-1431(3) Probation revocation disposition; and 41-5-1512(o)(i) Disposition of youth in need of intervention or youth who violate consent adjustments.*

JUVENILE JUSTICE & DELINQUENCY PREVENTION ACT

In 1974, Congress enacted the Juvenile Justice and Delinquency Prevention Act³ (JJDP ACT) in order to reform the juvenile justice system. This legislation was designed to provide federal direction, coordination, and resources to increase the effectiveness of state juvenile justice systems. In keeping with changes in the juvenile justice environment, the JJDP ACT has been amended every four years since its inception through 1992. Reauthorization was postponed in 1994 and the entire act was revised in November 2002.

Consistent with its comprehensive focus, other objectives of the JJDP ACT include:

- ◆ the enhancement of state and local juvenile justice planning,
- ◆ the strengthening and maintenance of the family unit,
- ◆ the provision of assistance and pass through funds for Native American Tribes,
- ◆ the development of programs for disadvantaged youth,
- ◆ the development of educational advocacy, and community based programs, and
- ◆ the prevention of alcohol and drug use and domestic violence.

The Juvenile Justice and Delinquency Prevention Act, evolving from decades of debate concerning juvenile justice, represents widespread consensus on what constitutes "best practices" with juveniles. The requirements of the JJDP ACT provide a standard against which states, tribes and communities can assess the comprehensiveness and effectiveness of their own policies and procedures regarding juveniles. The JJDP ACT allows states and tribes to enter into a voluntary partnership with the federal government in the effort to create innovative, responsive strategies to address juvenile justice issues. The JJDP ACT funds often provide the initial revenue for both the development and implementation of pilot programs for juveniles, consequently, the effectiveness of the programs can be assessed before instituting them on a statewide level.

The JJDP ACT contains the following core requirements, the first four are tied to funding:

1. Deinstitutionalization of Status Offenders and Non-offenders (DSO):
"Provide that juveniles who are charged with or who have committed an offense that would not be criminal if committed by an adult⁴, excluding juveniles who are charged with or who have committed a violation of section 922(x)(2) of title 18, United States Code⁵, or of a similar State law;⁶ juveniles who are charged with or

³ Public Law 93-415, 42 U.S.C 5601

⁴ Corresponds to Youth Court Act definition of youth in need of intervention (MCA 41-4-103(50))

⁵ Youth handgun law

⁶ Corresponds to MCA 45-8-361(1) possession of a weapon at school

who have committed a violation of a valid court order⁷; and juveniles who are held in accordance with the Interstate Compact on Juveniles as enacted by the State⁸; shall not be placed in secure detention facilities or secure correctional facilities; and juveniles who are not charged with any offense; and who are aliens; or alleged to be dependent, neglected, or abused⁹; shall not be placed in secure detention facilities or secure correctional facilities." [Section 223(a)11]

2. No Youth Contact with Incarcerated Adults

"Provide that juveniles alleged to be or found to be delinquent or juveniles¹⁰ within the purview of paragraph (11)¹¹ will not be detained or confined in any institution in which they have contact with adult inmates; and there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates, including¹² in collocated facilities, have been trained and certified to work with juveniles;" [Section 223(a)12]

3. Jail Removal

"Provide that no juvenile shall be detained or confined in any jail or lockup for adults except (A) juveniles who are accused of nonstatus¹³ offenses who are detained in such jail or lock-up for a period not to exceed 6 hours (i) for processing or release; (ii) while awaiting transfer to a juvenile facility; or (iii) in which period such juveniles make a court appearance; and only if such juveniles do not have contact with adult inmates and only if there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates in collocated facilities have been trained and certified to work with juveniles; (B) juveniles who are accused of nonstatus offenses, who are awaiting an initial court appearance that will occur within 48¹⁴ hours after being taken into custody (excluding Saturdays, Sundays, and legal holidays¹⁵), and who are detained in a jail or lockup (I) in which (i) such juveniles do not have contact with adult inmates; and (ii) there is in effect in the State a policy that requires individuals who work with both such juveniles and such adult inmates in

⁷ Montana is not eligible for the violation of valid court order exception because none of Montana's court order processes meet the minimum federal requirements for a valid court order process. Reference Appendix A for requirements for a valid court order process.

⁸ This represents a change from the JJDP Act of 1974 as amended. The flowchart in Appendix B sets forth handling of youth in accordance with the Interstate Compact as implemented by Montana.

⁹ Corresponds to MCA 41-3-102 definition of "Youth in need of care."

¹⁰ Corresponds to delinquent youth as defined in MCA 41-5-103(11)

¹¹ Status offenders or non-offenders

¹² Guidance from OJJDP based on Congressional Committee notes indicates that the word "including" was an error and that this requirement only applies to staff working with both juveniles and adults in a licensed collocated facility.

¹³ Corresponds to delinquent youth as defined in MCA 41-5-103(11)

¹⁴ This represents an increase over the previous version of the Act that provided for a probable cause hearing within 24 hours. Montana laws MCA 41-5-349(2)(b) and 41-5-332 are more restrictive. They still provide for a probable cause hearing within 24 hours exclusive of weekends and holidays.

¹⁵ Prior language was "exclusive of weekends and holidays". Some jurisdictions considered after 5 on Friday and before 8 AM on Mondays to be the weekend. The new language prevents that interpretation.

collocated facilities have been trained and certified to work with juveniles; and (II) that (i) is located outside a metropolitan statistical area (as defined by the Office of Management and Budget)¹⁶ and has no existing acceptable alternative placement available; (ii) is located where conditions of distance to be traveled or the lack of highway, road, or transportation do not allow for court appearances within 48¹⁷ hours (excluding Saturdays, Sundays, and legal holidays) so that a brief (not to exceed 48 hours) delay is excusable; or (iii) is located where conditions of safety exist (such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonably safe travel." [Section 223(a)13]

4. Disproportionate Minority Contact (DMC)

From 1992 until 2002, States were to determine if minority juveniles were disproportionately confined in secure detention and correctional facilities and if so address "any features of its system that may account for the disproportionate confinement of minority juveniles." In 2002 it was amended to read " address juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of minority groups, who come into contact with the juvenile justice system;." [Section 223 (a) 22]

5. Compliance Monitoring

"Provide for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to insure that the requirements of paragraph (11), paragraph (12), and paragraph (13) are met, and for annual reporting of the results of such monitoring to the Administrator, except that such reporting requirements shall not apply in the case of a State which is in compliance with the other requirements of this paragraph, which is in compliance with the requirements in paragraph (11) and paragraph (13), and which has enacted legislation which conforms to such requirements and which contains, in the opinion of the Administrator, sufficient enforcement mechanisms to ensure that such legislation will be administered effectively;" [Section 223(a)14]

¹⁶ In Montana, only 3 cities have been designated as Metropolitan Statistical Areas (MSA's). They are Billings, Missoula, and Great Falls.

¹⁷ Youth Court Act 41-5-133 is more restrictive, providing for initial court appearances within 24 hours.

INTENT OF THE JJDP ACT

DEINSTITUTIONALIZATION OF STATUS OFFENDERS (DSO)

The DSO requirement has been a part of the JJDP ACT since its inception in 1974. The DSO reflects the following principles:

- ◆ Holding status and non-offenders in secure confinement, although expedient, is an inappropriate strategy for handling juveniles who have not engaged in any criminal behavior.
- ◆ Historically, status offenders, when handled as delinquents, have been placed in environments that lead to physical and emotional harm.
- ◆ The punishment of status offenders, often abused and neglected children, simply represents a continuation of the cycle of mistreatment.

The JJDP ACT does not ignore the problems of status and non-offenders. Instead, the JJDP ACT has supplied federal funds to the states, who meet the core requirements, to develop a comprehensive continuum of care. The JJDP ACT encourages the creation and implementation of community-based treatment, diversion and delinquency prevention programs.¹⁸ The JJDP ACT emphasizes the importance of these programs as appropriate, and cost effective, alternatives to secure confinement. The maintenance of this requirement promotes just policies concerning status and non-offenders, and it upholds the necessary distinction in treatment strategies for the status and non-offenders versus the more serious juvenile offender.

STATUTORY EXCEPTIONS TO THE DSO REQUIREMENT

In the 1980 amendments to the JJDP Act, Congress enacted a provision intended to address concerns that the DSO mandate deprived juvenile court judges of a significant option in handling certain chronic status offenders. This modification of the JJDP Act was meant to be applied sparingly to the small number of status offenders that “continually flout the will of the court.”

Statutory exceptions are defined in the JJDP ACT and established by Congress. Their interpretation is strictly defined by the statute. These exceptions allow states to remove from consideration, for compliance purposes, offenses that constitute:

- violation of a valid court order;

¹⁸ FOR MORE INFORMATION ABOUT AVAILABLE GRANTS TO DEVELOP COMMUNITY-BASED PROGRAMS VISIT THE MONTANA BOARD OF CRIME CONTROL WEBSITE AT [HTTP://MBCC.STATE.MT.US](http://mbcc.state.mt.us) “APPLYING FOR GRANTS” OR CALL THE JUVENILE JUSTICE SPECIALIST AT (406) 444-3651.

- violation of Section 922(X) of the Title 18 (handgun possession on school grounds) or similar state law;
- or handling of youth in accordance with the Interstate Compact as implemented by the State (reference Appendix A).

Exception for Violation of a Valid Court Order (VCO)

The exception provides that status offenders found to have violated a Valid Court Order (VCO) may be securely detained in a juvenile detention or correctional facility.

A non-offenders, such as an alien, alleged dependent, abused or neglected child, and civil offenders, cannot be placed in a secure juvenile detention facility for violating a valid court order.

Prior to 2003, Montana's definition of a delinquent youth meant, "a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth: (a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or (b) who has been placed on probation as a delinquent youth or a youth in need of intervention and who has violated any condition of probation. Because Montana's formal court proceedings did not provide for all of the new conditions placed in the 2002 amendment to the JJDP Act for determining if a valid court order existed, the MT Legislature amended the definition of delinquent youth by removing the clause "or a youth in need of intervention". This action made the Youth Court Act more restrictive than the JJDP Act by eliminating the exception for a valid court order.

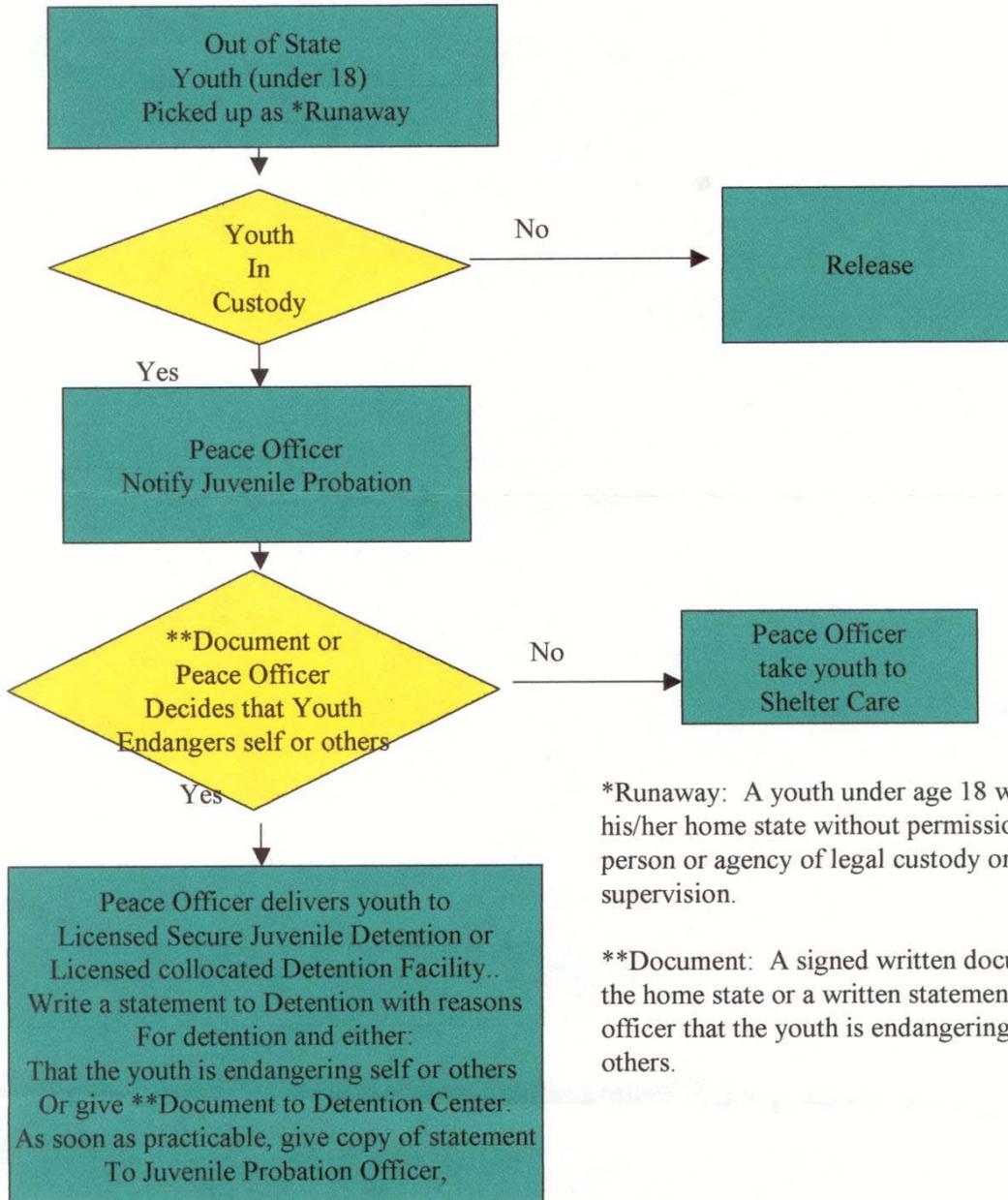
Exception for Title 18, Handgun Possession on School Grounds

Montana's law that prohibits weapons on school grounds applies to both adults and juveniles, therefore this offense is a criminal and not a status offense in Montana.

Exception Youth Subject to the Interstate Compact

Montana participates in the Interstate Compact for youth. The State Department of Corrections (DOC) is responsible for the administration of the Interstate Compact in Montana. MBCC and DOC jointly developed the following diagram to help juvenile justice professionals determine how to handle youth subject to the Rules of the Interstate Compact.

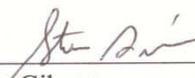
Decision Tree for Runaway youth from outside Montana

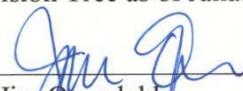


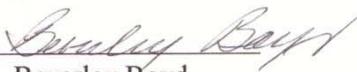
*Runaway: A youth under age 18 who has left his/her home state without permission of the person or agency of legal custody or supervision.

**Document: A signed written document from the home state or a written statement by a peace officer that the youth is endangering self or others.

The Montana Department of Corrections, Board of Crime Control and Office of Court Administration agree to this Decision Tree as of January 31, 2003.


Steve Gibson
Administrator
Juvenile Corrections Division


Jim Oppedahl
Executive Director
Montana Board of Crime Control


Beverley Boyd
Court Services Director
Court Administration

NO CONTACT WITH INCARCERATED ADULTS

The No Contact requirement, formerly known as the Sight and Sound Separation requirement, has been part of the JJDP ACT since its beginning in 1974. It was passed by Congress in response to the fact, supported by research, that juveniles placed in adult facilities where they had contact with adult inmates and correctional staff were frequently the victims of physical, mental, sexual, and emotional abuse, and the discovery that juveniles in contact with adult prisoners are exposed to the tools and training necessary to engage in criminal behavior.

In addition to protecting juveniles against abuse and corruption, sight and sound separation reinforces acceptable professional guidelines.

The American Correctional Association, the American Bar Association, and the Bureau of Indian Affairs support standards requiring separation, therefore, the sight and sound separation requirement represents the minimum standard for safe jail policy.

The separation of juveniles from adults allows for the immediate mobilization of effective, appropriate services for juveniles. The separation requirement maintains the safety of juveniles while focusing attention on their diversion to the necessary community resources.

JUVENILE JAIL REMOVAL INITIATIVE

The Jail Removal requirement added to the JJDP ACT in 1980, was in part, a method for addressing the unintended consequences of the sight and sound separation requirement.

To meet the separation requirement, juveniles were frequently held in jail environments that resembled solitary confinement. As a result of this isolation, the suicide rate of juveniles was found, according to a 1980s study by Community Research Associates, to be seven to eight times greater than that of juveniles held in juvenile detention centers.

In order to provide consistent protection of juveniles, the sight and sound separation requirement necessitated the addition of Jail Removal. The removal of juveniles from adult jails is supported by a widespread consensus on the appropriate handling of juveniles.

Juveniles held in adult jails and lockups remain at risk for physical, mental, and sexual abuse at the hands of adults. In addition, they are frequently exposed to and educated about how to become better criminals.

The National Council on Crime and Delinquency, the Coalition for Juvenile Justice, the National Sheriff's Associate, the Institute for Judicial Administration, the National Advisory Commission on Law Enforcement, and essentially every national organization representing law enforcement and the judicial system, recommends or mandates standards that forbid the jailing of children. The intent of Jail Removal is not to release juveniles who, because of the offenses and their history, need to be securely detained, but to promote the appropriate secure confinement of these juveniles in juvenile facilities. Juvenile facilities can provide both for the public safety and the specific evaluation and treatment needs of the juvenile.

RURAL EXCEPTION TO THE JAIL REMOVAL REQUIREMENT

This exception was added to the JJDP Act to prevent penalizing those communities with limited access to court personnel for probable cause hearings, and to provide for the safety of juveniles and justice personnel where adverse weather or travel conditions prevented safe transport of youth to juvenile facilities.

The JJDP Act allows for a delay of 48 hours in the probable cause hearing. However MCA 41-5-349 is more restrictive, limiting placement of youth in jails or other adult detention facilities to 24 hours, excluding weekends and legal holidays, awaiting a probable cause hearing pursuant to 41-5-332. Therefore in MT the rural exception applies where:

1. The facility is located outside a metropolitan statistical area, as defined by the federal Office of Management and Budget¹⁹; **and**
2. Alternative facilities are not available or do not provide adequate security; **and**
3. The youth is kept in an area that provides physical as well as sight and sound separation from adults accused or convicted of criminal offenses; **and**
4. The youth is awaiting a probable cause hearing pursuant to 41-5-332; or
5. is located where conditions of safety exist (such as severely adverse, life-threatening weather conditions that do not allow for reasonably safe travel), in which case the time for an appearance may be delayed until 24 hours after the time that such conditions allow for reasonably safe travel.

Facilities in non-MSA's will be found in violation if they:

¹⁹ As of October 2005, this is everywhere except Billings, Missoula, and Great Falls. Micropolitan areas such as Bozeman and Kalispell need to check often as their growing populations may change their status in the near future.

1. Hold a youth beyond 6 hours and release them without a probable cause hearing; or
2. Hold a youth in excess of 24 hours, excluding weekends and holidays, before a probable cause hearing without also providing independent documentation of the severe adverse weather conditions;

The clock starts the moment a juvenile is placed into a locked setting. This includes any lockable room that cannot be unlocked from the inside, or when a juvenile is cuffed to a stationary object.

Once started, the clock cannot be turned off, even if the juvenile is removed briefly from the locked setting.

The following circumstances **do not** start the clock:

- 1) the juvenile is placed into a locked squad car,
- 2) the juvenile is handcuffed to him or herself,
- 3) the juvenile is in a secure booking area while being processed (*not pending processing nor after processing*) and is under continuous "in-person" supervision, or
- 4) the juvenile is placed into an unlocked room with freedom of movement from the facility.

COMPLIANCE MONITORING

Assessing compliance affects the state's eligibility for formula grant funding and participation in various programs offered through the Office of Juvenile Justice and Delinquency Prevention (OJJDP). Non-compliance with any of the four core requirements of the JJDP Act (De-institutionalization of Status and Non-offenders, No Contact with Incarcerated Adults, Jail Removal and DMC) results in a reduction of not less than 20% of the funds awarded to the state for each paragraph violated. In addition, the State shall be ineligible to receive any allocation under the Act unless the State agrees to use 50% of the amount allocated to achieve compliance with the violated requirement(s). An effective compliance monitoring system clarifies gaps in the continuum of care and highlights challenge areas in a state's juvenile justice system. As a result, compliance monitoring can represent a component in the process of state policy and program development.

The Delinquency Prevention Program, under Title V of the JJDP Act, requires localities to provide certification of compliance with the JJDP Act in order to be eligible for these funds.

Compliance monitoring contains four primary components:

- 1) **Identification of the Monitoring Universe.** Compiling a comprehensive list of the facilities and programs that could hold juveniles pursuant to public authority.
- 2) **Classification of the Monitoring Universe.** Determining which agencies and facilities must be monitored for compliance with the JJDP Act.
- 3) **Facility Inspections.** Secure adult jails and lockups are inspected to review the physical structure to ensure sight and sound separation of juveniles from incarcerated adults and to determine that policies and procedures remain consistent with the Youth Court Act and JJDP Act guidelines. All secure juvenile facilities are inspected in order to review record keeping systems and reporting procedures. An additional sampling of non-secure facilities is required to assure consistency in classification.
- 4) **Collection and Verification of Data.** Data regarding the secure detention of juveniles shall be collected and verified for accuracy and consistency. The data collection provides the information necessary for assessing violations and determining compliance levels with the JJDP Act.

Montana's plan for monitoring compliance with the JJDP and Youth Court Acts is available for download from our web site at:

<http://www.bccdoj.doj.state.mt.us/juvjust/index.shtml>

DISPROPORTIONATE MINORITY CONTACT, FORMERLY CONFINEMENT (DMC)

DMC was added during the 1988 reauthorization of the JJDP Act to address Disproportionate Minority Confinement. In 2002 the language was changed to address Disproportionate Minority *Contact* with the juvenile justice system. The DMC requirement, by examining the entire system, now takes a comprehensive approach to the issue of minority over-representation. The addition of DMC represents a commitment to the equitable treatment of all juveniles, regardless of race, ethnicity, and culture, and it strives to enhance the integrity of the juvenile justice system.

Data collected through the Department of Corrections and the Board of Crime Control consistently showed that Native American youth were confined anywhere from 3 to four times what could be expected given that they only comprised 8% of the general juvenile population of the state. Data analysis indicated that minority youth were over-represented at all decision points of the juvenile justice system, referral through disposition.

In 2002, a position paper developed by Drs. Feyerherm and Butts and paid for by OJJDP determined that the method used by OJJDP to calculate DMC consistently overstated DMC in lightly populated states such as Montana, while understating DMC in heavily populated states. In 2005 Dr. Feyerherm delivered a new tool to MT that will indicate if calculations are statistically valid for MT's small numbers. MBCC is in

the process of developing a webpage dedicated to DMC where the results of DMC analysis and other DMC information will be available: www.mbcc.mt.gov

In other states it is not uncommon to find that a minority youth who commits the same offense as a non-minority youth often receives a harsher disposition. The maintenance of a system that may practice discrimination undermines the integrity of the juvenile justice system and the principle of equal justice under the law.

The contention that minority juveniles commit more offenses and more serious offenses falters with the disparity of treatment existing between minority and non-minority juveniles sharing similar histories and committing similar offenses. The fact that virtually every state, excluding Vermont, has identified the over-representation of minorities in detention and/or correctional facilities supports the need for the maintenance of the DMC requirement. The leadership provided by the JJDP Act has initiated this widespread, essential effort to attain justice for all juveniles.

JUVENILES AND THE ADULT COURT

According to the December 10, 1996 Federal Register, 31.303(e)(2), "juveniles formally waived or transferred to criminal court and against whom a criminal charges have been filed, or juveniles over whom a criminal court has original or concurrent jurisdiction and such court's jurisdiction has been invoked through the filing of criminal felony charges" are considered adults and do not fall under the purview of the JJDP Act.

However MCA 41-5-206(7) is more restrictive than the JJDP Act and requires that the youth be handled as a youth until after the transfer hearing if the District Court retains jurisdiction in the case. It then further requires that they be maintained sight and sound separate from incarcerated adults until adjudicated by the district court. Once adjudicated, the district adult court retains jurisdiction until the youth attains the age of 21.

Transferring juveniles or direct filing to adult court, although initially appearing to be an effective response to juvenile crime, does not necessarily provide the expected outcomes of greater deterrence, harsher sentences, and prevention of recidivism.

- ◆ In states that possess harsh automatic transfer laws, there has been no evidence that these punitive policies have any deterrent effect.
- ◆ Transfer to adult court may not result in harsher sentencing. The U. S. Department of Justice noted that in 1991, 44% of the cases in which a juvenile was transferred to criminal court involved property offenses, and these less serious offenses are likely to result in plea bargains in the overburdened adult criminal court system, at least do not result in incarceration.
- ◆ A study conducted in 1991 suggests recidivism rates may be lower for juveniles sanctioned in juvenile court than for juveniles sanctioned in adult court.

- ◆ Research on the transfer/waiver of juveniles to adult court documents the presence of disproportionately large numbers of minority youth being transferred in comparison to non-minority youth.

The belief that the adult system contains the resources to distribute more effective, efficient, and appropriate punishment and rehabilitation for juveniles is not widely supported in actual practice. Relying on an adult system, where effectiveness in dealing with adult criminals has been widely questioned, to deal with the problems of juveniles undermines the intention behind the creation of a juvenile justice system.

The juvenile system is an integral part of a society whose future is built upon the integrity, vision, and self-reliance of its youth. The widespread transfer of juveniles, at increasingly younger ages, to the adult system represents the relinquishment of the hope of rehabilitation and the abandonment of core juvenile justice principles.

CUSTODY REQUIREMENTS

SECURE CUSTODY

These secure custody requirements outline the JJDP ACT procedures for the holding of juveniles in secure facilities.

When used to define a detention or correctional facility, the term secure includes residential facilities with construction features designed to physically restrict the movements and activities of persons in custody.

NON-SECURE CUSTODY

A non-secure environment, for the purposes of detention within a secured facility, is defined in terms of freedom of movement from the facility. The juvenile cannot be detained by hardware or construction fixtures designated to restrict the movement or activities of persons in custody. Non-secure custody means the juvenile is able to leave the facility at any time.

The following non-secure custody guidelines for juveniles held in law enforcement facilities were established to assist in distinguishing between secure detention and non-secure custody²⁰:

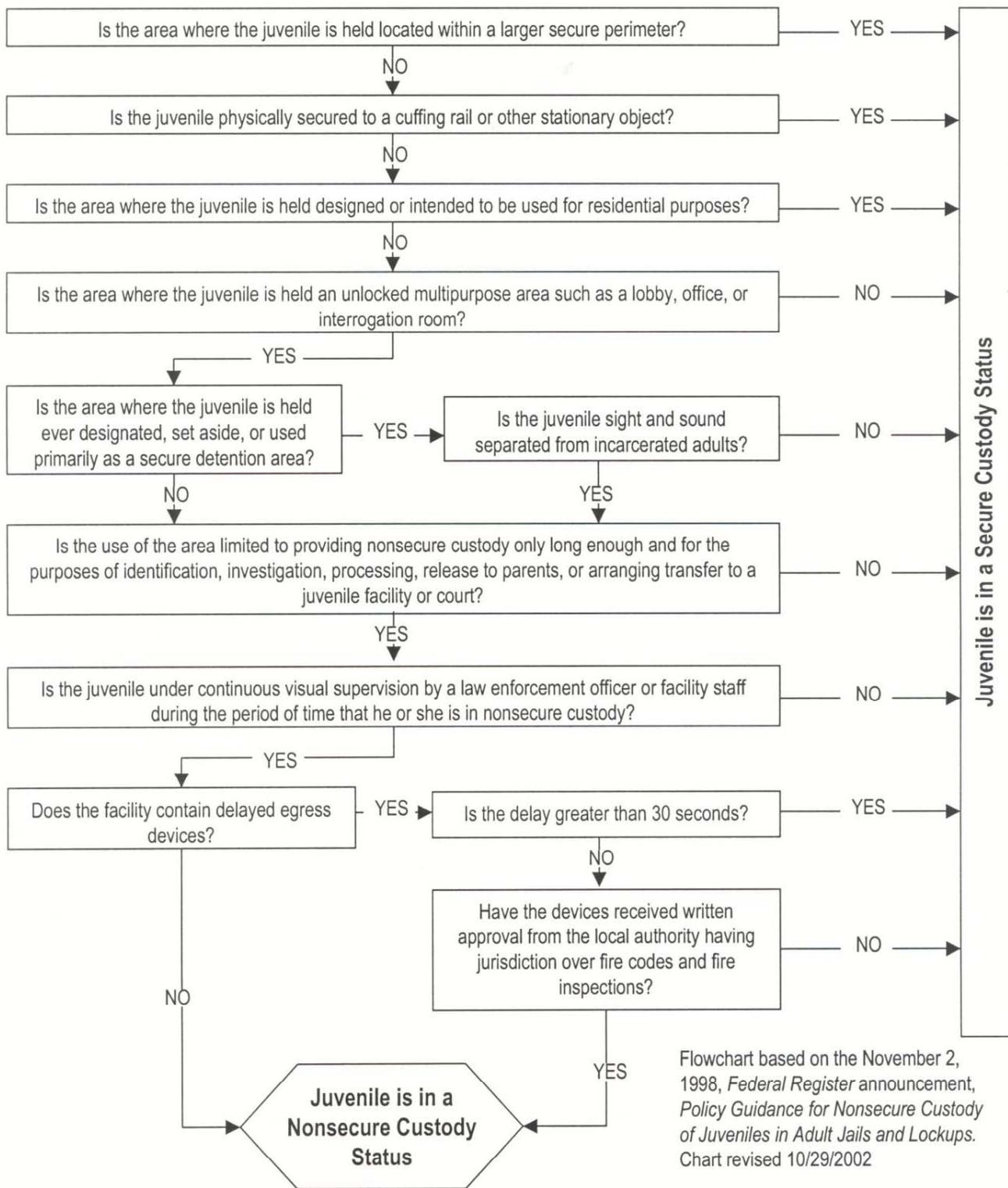
1. The area where the juvenile is placed is an unlocked, multi-purpose location and not part of a larger secure area, such as a lobby, office, or an interview room, which is not designated, set aside, or able to be used as a secure area (a room with a lock that cannot be unlocked from the inside is considered secure--even if the lock is not used when youth are present);

²⁰ Reference Appendix B --OJJDP Flowchart To Determine if a Juvenile is in a Secure or Nonsecure Custody Status in an Adult Jail or Lockup

2. The juvenile is not physically secured to an object that would prevent the youth from leaving at will;
3. The use of the area is limited to providing non-secure custody long enough and for the purposes of identification, processing, release, or transfer;
4. The area(s) is/are not designated or intended to be used for residential purposes, and

The chart on the following page was developed by OJJDP to illustrate secure vs. non-secure custody within a secure facility.

Flowchart To Determine if a Juvenile Is in a Secure or Nonsecure Custody Status in an Adult Jail or Lockup



CLASSIFICATION OF FACILITIES

Classification will determine what type of juvenile may be held and for what period of time. The two primary descriptors to determine facility classification are the level of security and the location of the facility.

HOLDOVER FACILITIES

If the facility is staff-secure or non-secure and is not:

1. *A licensed* youth care facility as defined in MCA 52-2-602, or
2. located in an adult jail or lock-up,

it will be classified as a non-secure holdover program. For monitoring purposes the non-secure holdover standards²¹ will apply (Reference MCA 41-5-103 (23) Holdover).

LICENSED COLLOCATED FACILITIES

If the facility is licensed by the Department of Corrections, secure and located on the same grounds with an adult jail or lock-up, it will be classified as an approved collocated facility. For monitoring purposes the standards for Licensed Secure Juvenile Detention Facilities will apply. (Reference MCA 41-5-103 (49)(a)(ii) Collocated secure detention facility)

OTHER SECURE FACILITIES

If the facility is unlicensed and has secure features, such as cuffing rails or doors that lock that cannot be unlocked from the inside without a key, it will be classified as an Adult Jail or Lockup. For monitoring purposes the Standards for Law Enforcement Departments will apply.

LICENSED JUVENILE DETENTION FACILITIES

If the facility is secure and licensed by the Department of Corrections, it will be classified as juvenile detention facility. (Reference MCA 41-5-103(15) Detention facility, (39) Short-term detention center, and (49) Youth detention facility). For monitoring purposes the standards for Licensed Juvenile Detention Facilities will apply

YOUTH CORRECTIONAL FACILITIES

State youth correctional facilities are the Pine Hills youth boys' correctional facility in Miles City and the Riverside youth girls' correctional facility in Boulder and Standards

²¹ Juvenile Holdover Policies and Procedures are available for download from MBCC web site at <http://mbcc.state.mt.us/juvjust/HoldovrMan.pdf> or upon request from the Juvenile Justice Specialist by calling (406) 444-3651.

for Youth Correctional Facilities apply. (Reference MCA 41-5-103(40) State youth correctional facility)

REGULATIONS FOR COLLOCATED FACILITIES

The Federal Regulations issued pursuant to the JJDP Act delineates four regulatory requirements which must be met to establish a juvenile detention facility where such a facility is located in the same complex of buildings as an adult jail or lock-up, referred to as a collocated facility.

The Intent of the Collocation Requirements

The collocation regulations reflect the commitment of OJJDP to promoting best practice principles with juveniles.

- ◆ The OJJDP maintains that state should not rely on the development of collocated facilities as the primary strategy for achieving and maintaining compliance with the Jail Removal requirement.
- ◆ The emphasis on facility, program and staff separation support the core requirements of the JJDP Act and the principles that the needs of juveniles are fundamentally different from the needs of adults.

The four criteria for a juvenile detention facility that is collocated with an adult jail or lock-up provide for:

1. Separations between juveniles and adults such that there could be no sustained sight or sound contact between juveniles and incarcerated adults. Total separation must be achieved:
 - a. in residential areas, e.g. sleeping and bathroom, through architectural design such that no contact is possible;
 - b. in program areas, e.g. educational, vocational, and recreational, separation must be achieved either through architectural design or through time-phased use of areas as directed by written policies and procedures.
2. Total separation in all juvenile and adult programs within the facilities, including recreation, education, counseling, healthcare, dining, sleeping and general living activities.
3. Separate juvenile and adult staff, including management, security staff and direct care staff, such as recreation, education and counseling are required unless the state has a policy that requires such staff that work with both adults and juveniles be trained to work with juveniles. (**NOTE: Montana is developing those policies, but until they are in place, the separate staffing requirement remains effective.**)

Specialized services staff, such as cooks, bookkeepers, and medical professionals who are not normally in contact with detainees, or whose infrequent contacts occur under conditions of separation of juveniles and adults, can serve both.

IN STATES THAT HAVE ESTABLISHED STANDARDS OR LICENSING REQUIREMENTS FOR SECURE JUVENILE DETENTION FACILITIES, THE JUVENILE FACILITY MUST MEET THE STANDARDS AND BE LICENSED AS APPROPRIATE.²² FACILITY REQUIREMENTS

Each type of facility is subject to compliance with some or all of the core requirements. The following chart was developed as a reference guide to understand which core requirements apply based on the facility type.

JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT FACILITIES MONITORED FOR COMPLIANCE WITH CORE REQUIREMENTS				
Each type of facility is subject to compliance with all or a portion of the core requirements. This chart shows the facilities and the core requirement for which they are monitored.				
Type of Facility	DSO	S/S	JR	DMC
Adult Jail/Lockup	Yes	Yes	Yes	Yes
Juvenile Detention/Correctional Facility	Yes	No	No	Yes
Collocated Facility	Yes	Yes	No	Yes
Non-secure Holdover	No	No	No	Yes
Secure Court Holding	Yes	Yes	No	Yes
KEY TO COLUMN HEADINGS				
DSO Deinstitutionalization of Status and Non-offenders				
S/S Sight Sound Separation (No Contact with Adult Inmates)				
JR Removal of Juveniles from Adult Jails & Lockups				
DMC Minority Detention and Confinement				

Since there are differences between the JJDP Act and the Montana Code Annotated (MCA) the chart on the following page was developed as a reference guide to understand what a compliance monitor will look for based on offender type and facility type. Note that where MCA is more stringent than the requirements of the JJDP Act, the chart lists compliance with the MCA.

²²MONTANA LICENSING STANDARDS ARE AVAILABLE ON REQUEST FROM:
 JUVENILE CORRECTIONS DIVISION
 QUALITY ASSURANCE – DETENTION LICENSING
 MONTANA DEPARTMENT OF CORRECTIONS
 1539 11TH AVENUE
 HELENA, MT 59620
 Phone: (406) 444-7471

CUSTODY RESTRICTIONS²³ FOR YOUTH IN SECURE FACILITIES

TYPE OF JUVENILE	TYPE OF FACILITY	ADULT JAIL, LOCKUP OR UNLICENSED COLLOCATED FACILITY IN AN MSA ²⁴	ADULT JAIL, LOCKUP OR UNLICENSED COLLOCATED FACILITY IN A NON-MSA ²⁵	LICENSED JUVENILE DETENTION OR COLLOCATED FACILITY	JUVENILE CORRECTIONAL FACILITY
Non-offender/ Status Offender/Civil Offender Either accused or Adjudicated	Can't be securely held				
Accused Criminal-type offender.	If kept sight & sound separate from adult offenders, can be held up to six hours but in no case overnight for the purpose of identification, processing or transfer of the youth to an appropriate juvenile detention or shelter care facility	If kept sight & sound separate from adult offenders, can be held up to 24 hours, excluding weekends and legal holidays, pending a probable cause hearing or pending safe travel conditions. Youth held over 6 hours and released without a probable cause hearing will be counted as a violation.	May be held up to 24 hrs. pending probable cause hearing. If probable cause found during hearing, may be held any length of time pending disposition of the case. If probable cause not found or hearing not held within 24 hours, youth must be immediately released from custody	Can't be securely held	
Adjudicated Criminal-type offender.	Can't be held for any length of time		Can be held for any length of time		
Youth whose petition has been filed in district court prior to formal proceeding in youth court and prior to transfer hearing.	Can be held up to six hours but in no case overnight for the purpose of identification, processing or transfer of the youth to an appropriate juvenile detention or shelter care facility	Can be held up to 24 hours, excluding weekends and legal holidays, if the youth is awaiting a probable cause hearing pursuant to 41-5-332 and maintained sight & sound separate from adult offenders	May be held until age 18, then must be immediately removed to an adult facility.	May not be securely held	
Youth whose petition has been filed in district court prior to formal proceeding in youth court and after transfer hearing and district court retains jurisdiction	Youth may be detained pending final disposition of the youth's case if the youth is kept in an area that provides physical separation from adults accused or convicted of criminal offenses		Pending disposition of the case may be held until age 18, then must be immediately removed.	May not be securely held	
Criminally convicted youth	Under 16 years of age may not be confined in a state prison facility. Over 17, during the period of confinement school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals with Disabilities Education Act (IDEA), 20 USC 1400, et seq.		May be held at the discretion of DOC until age 18, then must be immediately removed.		

²³ Per either the JJDP Act of the MT Youth Court Act, whichever is more restrictive.

²⁴ MSA = Metropolitan Statistical Area per federal Office of Management & Budget. As of October 2005, Billings, Great Falls, and Missoula are MSA's.

²⁵ Without appropriate alternative placements available.

TECHNICAL ASSISTANCE & TRAINING

The Montana Board of Crime Control and the Youth Justice Council recognize the challenges for reaching and maintaining compliance with the JJDP ACT. Technical assistance and training is available to agencies, counties and municipalities. Examples include, but are not limited to:

- ◆ New jail or lock-up blueprint review to determine whether the proposed facility and juvenile processing practices are in compliance with the core requirements of the JJDP ACT.
- ◆ Education and training for patrol, detention and administrative officers regarding the handling of juveniles.
- ◆ Training for juvenile justice professionals at conferences or regional meetings.
- ◆ Assistance to local communities interested in developing or reviewing detention practices and placement options.
- ◆ Problem solving to reach solutions consistent with the JJDP Act, the Youth Court Act and responsive to community needs and protections.
- ◆ Assistance in reviewing liability issues related to juvenile holding.

APPENDIX A – OJJDP VCO SUMMARY

VCO Exception Summary

A juvenile commits a status offense such as truancy, runaway, curfew, or minor in possession of alcohol. The valid court order provision may not be used for nonoffenders.

A valid court order is given by a juvenile court judge to a juvenile:

- ◆ who was brought before the court and made subject to such order, and
- ◆ who received, before the issuance of such order, the full due process rights guaranteed to such juvenile by the Constitution of the United States.

After its issuance, the juvenile violates the valid court order.

The juvenile may be held in a juvenile detention facility or a nonsecure facility. The juvenile may not be held in an adult jail or lockup for any amount of time.

If the juvenile is held in a juvenile detention facility, a representative from an appropriate public agency must interview the juvenile in person within 24 hours (excluding weekends and holidays) of being placed into detention.

The juvenile can continue to be held in a juvenile detention facility if the juvenile has a reasonable cause hearing within 48 hours (excluding weekends and holidays) of being placed in detention. The reasonable cause hearing must include the following:

- ◆ A judicial determination that there is reasonable cause to believe the juvenile violated the valid court order, and
- ◆ A judicial determination that the juvenile is being held in the most appropriate placement pending disposition of the violation. This determination is based upon an assessment submitted by an appropriate public agency representative that reviews the immediate needs of the juvenile.

If all of the items listed above were satisfied during the reasonable cause hearing, the juvenile may be held in a juvenile detention center but should not be held any longer than necessary to make an informed disposition. The juvenile cannot be held in an adult jail or lockup for any length of time.

VCO Exception Checklist

A valid court order means a court order given by a juvenile court judge to a juvenile who was brought before the court and made subject to such order, and who received, before the issuance of such order, the full due process rights guaranteed to such juvenile by the Constitution of the United States.

If a juvenile is taken into custody for violating a valid court order issued for committing a status offense, the following conditions must be met:

- Was an appropriate public agency promptly notified that such juvenile is held in custody for violating such order?
- Was the juvenile interviewed in person, by an appropriate public agency representative, within 24 hours of the juvenile's placement in secure detention, excluding weekends and holidays?
- Did the public agency representative submit an assessment to the court, prior to the 48 hour reasonable cause hearing, regarding the immediate needs of the juvenile and the most appropriate placement needs of the juvenile pending disposition of the violation?
- Was the reasonable cause hearing held within 48 hours of the juvenile's placement in secure detention, excluding weekends and holidays?
- Was there a judicial determination that there was reasonable cause to believe the juvenile violated such order?

VCO Exception Assessment Report

IN THE INTEREST OF: _____ DOB: _____

Case No. _____

COMES NOW, _____

with the _____ and reports to the Court as follows:

- ◆ The juvenile was placed in the _____ Juvenile Detention Facility on the _____ day of _____, _____.
- ◆ The juvenile was interviewed in person on _____.

Describe the circumstances, events or behaviors relevant to this incident:

Describe the immediate needs of this juvenile:

Describe the most appropriate placement alternatives available for this juvenile awaiting disposition on the alleged violation:

Respectfully Submitted,

_____ Date: _____

APPENDIX B - DECISION TREE FOR HANDLING OUT-OF-STATE RUNAWAY YOUTH

JUVENILE CORRECTIONS DIVISION
DEPARTMENT OF CORRECTIONS



STEVE GIBSON, DIVISION ADMINISTRATOR

STATE OF MONTANA

1539 11th Avenue
PO Box 201301
Helena, MT 59620-1301
TELEPHONE: (406) 444-0851
FAX: (406) 444-0522

RECEIVED

FEB 13 2003

BOARD OF CRIME CONTROL

February 10, 2003

Audrey Allums
3075 N. Montana Avenue
PO Box 201408
Helena, MT 59620-1408

Dear Audrey:

There have been recurring questions about the legality of detaining runaway youth from other states. It is the desire of the three entities involved in the process to clarify the steps in the process for field agents and detention centers.

The Montana Department of Corrections, the Supreme Court Administrator's Office and the Montana Board of Crime Control have agreed upon a "Decision Tree For Detention Of Out Of State Runaway Youth".

The Decision Tree is attached and the agency representatives, by signing the Decision Tree document dated January 24, 2003, indicate agreement to this process. It is our hope that this will eliminate any confusion regarding the process and any concerns that funding for detention centers will be jeopardized when out of state runaways are detained.

Please make this Decision Tree available to all officers who may have a need to be involved in the custody of and detaining of juvenile runaways from outside Montana.

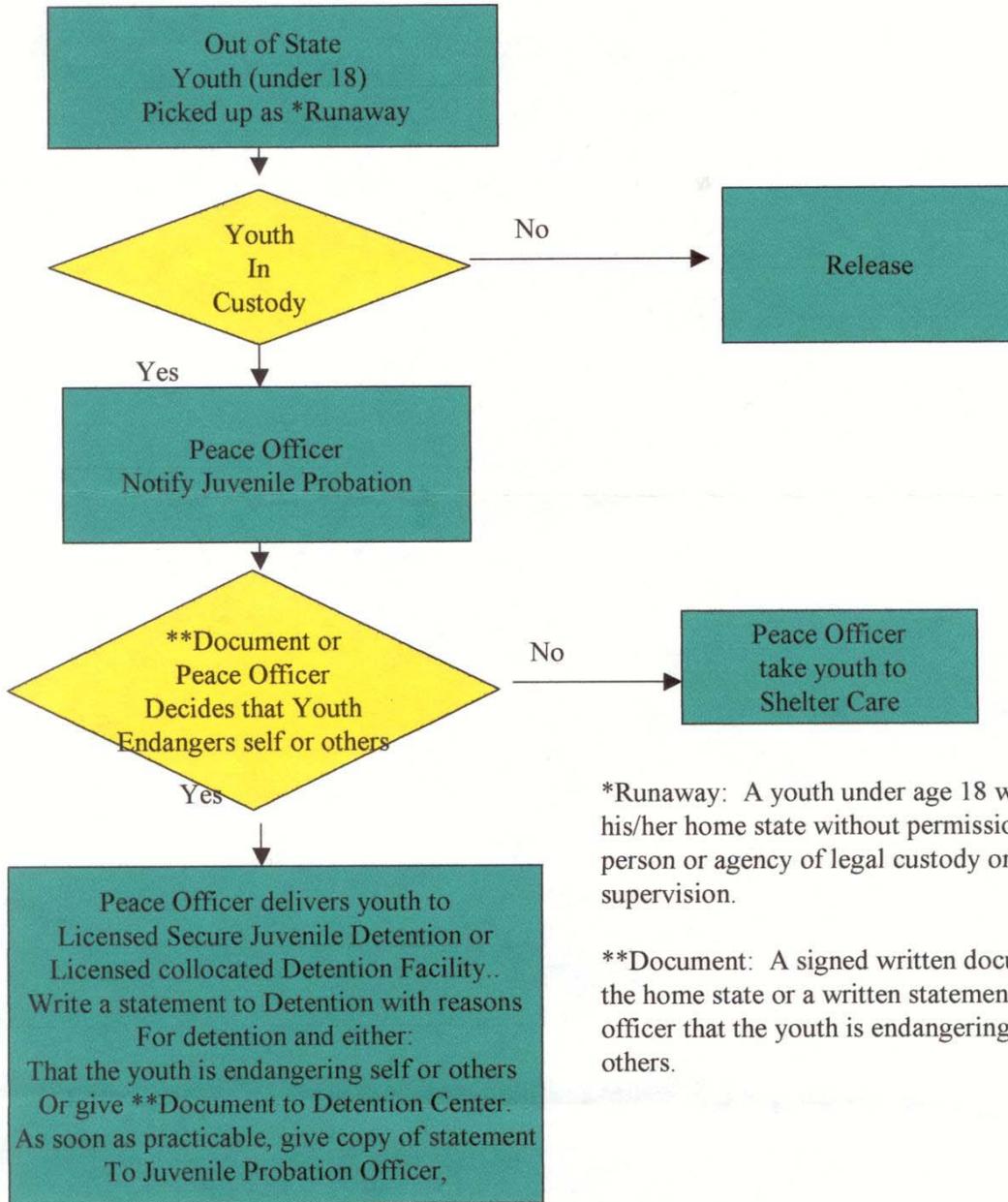
Sincerely,

KAREN DUNCAN
Bureau Chief
Juvenile Community Corrections Bureau

KD/cb

Enclosure.

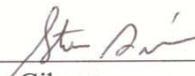
Decision Tree for Runaway youth from outside Montana

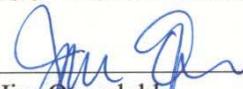


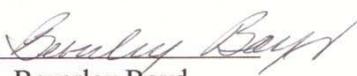
*Runaway: A youth under age 18 who has left his/her home state without permission of the person or agency of legal custody or supervision.

**Document: A signed written document from the home state or a written statement by a peace officer that the youth is endangering self or others.

The Montana Department of Corrections, Board of Crime Control and Office of Court Administration agree to this Decision Tree as of January 31, 2003.


Steve Gibson
Administrator
Juvenile Corrections Division


Jim Oppedahl
Executive Director
Montana Board of Crime Control


Beverley Boyd
Court Services Director
Court Administration

APPENDIX D - YOUTH COURT ACT

TITLE 41

MINORS

CHAPTER 5

YOUTH COURT ACT

Part 1 -- General

- 41-5-101. Short title.
- 41-5-102. Declaration of purpose.
- 41-5-103. Definitions.
- 41-5-104. County commissioners authorized to provide funds.
- 41-5-105. Youth court committee.
- 41-5-106. Order of adjudication -- noncriminal.
- 41-5-107. Administration.
- 41-5-108 and 41-5-109 reserved.
- 41-5-110. Youth court hearings -- priority.
- 41-5-111. Court costs and expenses.
- 41-5-112. Parental contributions account -- allocation of proceeds.
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- 41-5-203. Jurisdiction of court.
- 41-5-204. Venue and transfer.
- 41-5-205. Retention of jurisdiction -- termination.
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- 41-5-207. Renumbered 41-5-111.
- 41-5-208. Transfer of supervisory responsibility to district court after juvenile disposition -- nonextended jurisdiction and nontransferred cases.
- 41-5-209 through 41-5-214 reserved.
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- 41-5-303. Renumbered 41-5-331.
- 41-5-304. Renumbered 41-5-1206.
- 41-5-305. Renumbered 41-5-341.
- 41-5-306. Renumbered 41-5-344.
- 41-5-307. Renumbered 41-5-322.
- 41-5-308. Repealed.
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- 41-5-310. Repealed.
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41-5-351 through 41-5-354 reserved.
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**Part 4 -- Informal Proceeding
(Renumbered)**

**Part 5 -- Proceeding on Petition
(Renumbered and Repealed)**

**Part 6 -- Confidentiality of Proceedings--Records
(Renumbered and Repealed)**

**Part 7 -- Probation Officers
(Renumbered)**

**Part 8 -- Custodial Care
(Renumbered and Repealed)**

Part 9 -- District Youth Guidance Homes

(Repealed)

**Part 10 -- State Grants for Youth Detention Services
(Renumbered)**

**Part 11 -- Extended Jurisdiction Prosecution Act
(Renumbered)**

Part 12 -- Preliminary Investigation

- 41-5-1201. Preliminary inquiry -- referral of youth in need of care.
- 41-5-1202. Preliminary inquiry -- procedure -- youth assessment.
- 41-5-1203. Preliminary inquiry -- youth assessment.
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- 41-5-1205. Preliminary inquiry -- dispositions available to probation officer.
- 41-5-1206. Investigation, fingerprints, and photographs.
- 41-5-1207 through 41-5-1209 reserved.
- 41-5-1210. Information to be collected by juvenile probation officer or assessment officer.

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- 41-5-1301. Informal disposition.
- 41-5-1302. Consent adjustment without petition.
- 41-5-1303. Communications privileged.
- 41-5-1304. Disposition permitted under consent adjustment.

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- 41-5-1401. Petition -- county attorney -- procedure -- release from custody.
- 41-5-1402. Petition -- form and content.
- 41-5-1403. Summons.
- 41-5-1404. Service of summons.
- 41-5-1405. Disqualification of judges.
- 41-5-1406 through 41-5-1410 reserved.
- 41-5-1411. Appointment of guardian ad litem.
- 41-5-1412. Rights and obligations -- persons to be advised -- contempt.
- 41-5-1413. Right to counsel.
- 41-5-1414. Right to confront witnesses.
- 41-5-1415. Admissibility of confession or illegally seized evidence.
- 41-5-1416. Victims and witnesses of juvenile felony offenses -- consultation -- notification of proceedings.

- 41-5-1417 through 41-5-1420 reserved.
- 41-5-1421. Posttrial motions.
- 41-5-1422. Modification of court orders -- notice to department -- hearing.
- 41-5-1423. Appeals.
- 41-5-1424 through 41-5-1430 reserved.
- 41-5-1431. Probation revocation proceeding -- petition -- hearing -- disposition.
- 41-5-1432. Enforcement of restitution orders.

Part 15 -- Formal Proceeding--Hearing--Disposition

- 41-5-1501. Consent decree with petition.
- 41-5-1502. Adjudicatory hearing.
- 41-5-1503. Medical or psychological evaluation of youth -- urinalysis.
- 41-5-1504. Finding of suffering from mental disorder and meeting other criteria -
- rights -- limitation on placement.
- 41-5-1505 through 41-5-1510 reserved.
- 41-5-1511. Dispositional hearing -- contributions by parents or guardians for
expenses.
- 41-5-1512. Disposition of youth in need of intervention or youth who violate
consent adjustments.
- 41-5-1513. Disposition -- delinquent youth -- restrictions.
- 41-5-1514 through 41-5-1520 reserved.
- 41-5-1521. Restitution.
- 41-5-1522. Commitment to department -- restrictions on placement.
- 41-5-1523. Commitment to department -- supervision.
- 41-5-1524. Commitment to department -- transfer of records.
- 41-5-1525. Contribution for costs -- order for contribution -- exceptions --
collection.

Part 16 -- Extended Jurisdiction Prosecution Act

- 41-5-1601. Short title.
- 41-5-1602. Extended jurisdiction juvenile prosecution -- designation.
- 41-5-1603. Hearing on request.
- 41-5-1604. Disposition in extended jurisdiction juvenile prosecutions.
- 41-5-1605. Revocation of stay -- disposition.
- 41-5-1606. Public safety.
- 41-5-1607. Proceedings -- rights.

Part 17 -- Probation Officers

- 41-5-1701. Employment of juvenile probation officers and youth court staff.
- 41-5-1702. Repealed.
- 41-5-1703. Powers and duties of probation officers.
- 41-5-1704. Repealed.
- 41-5-1705. Repealed.
- 41-5-1706. Juvenile probation officer training.
- 41-5-1707. Assessment officers -- duties -- access to records.

Part 18 -- Custodial Care

- 41-5-1801. Shelter care facilities.
- 41-5-1802. Rules.
- 41-5-1803. County responsibility to provide youth detention services.
- 41-5-1804. Regional detention facilities.
- 41-5-1805. Creation of regions -- requirements -- limitation on number of regions.
- 41-5-1806. Contracts with nonparticipating counties.
- 41-5-1807. Responsibility for payment of detention costs.

Part 19 -- State Grants for Youth Detention Services

- 41-5-1901. Definitions.
- 41-5-1902. State grants to counties.
- 41-5-1903. Application for grants -- county plans -- obligation of counties receiving grants -- review and monitoring.
- 41-5-1904. Distribution of grants -- limitation of funding -- restrictions on use.
- 41-5-1905. Allocation of grants.
- 41-5-1906. Amendment of state plan.
- 41-5-1907. Compliance with federal requirements.
- 41-5-1908. Rulemaking authority.

Part 20 -- Juvenile Delinquency Intervention Act

- 41-5-2001. Short title.
- 41-5-2002. Purpose.
- 41-5-2003. Establishment of program -- department duties.
- 41-5-2004. Youth court duties.

41-5-2005. Judicial districts participating in juvenile delinquency intervention program -- youth placement committee to submit recommendation to department -- acceptance or rejection of recommendation by department.
41-5-2006. Rulemaking authority.

Parts 21 through 24 reserved

Part 25 -- Criminally Convicted Youth Act

41-5-2501. Short title.
41-5-2502. Purpose.
41-5-2503. Disposition of criminally convicted youth.
41-5-2504 through 41-5-2509 reserved.
41-5-2510. Sentence review hearing.

Chapter Cross-References

Civil liability of parent for shoplifting by minor, 27-1-718.
Crimes, Title 45.
Unlawful possession of intoxicating substance by children, 45-5-624.
Use of firearms by children under 14 prohibited, 45-8-344.
Department of Corrections -- youthful offenders, Title 52, ch. 5, part 1.

Part 1

General

Part Cross-References

Destruction of property by minor -- liability of parents, 40-6-237.
Youthful offenders, Title 52, ch. 5, part 1.

41-5-101. Short title. This chapter may be cited as the "Montana Youth Court Act".

History: En. 10-1201 by Sec. 1, Ch. 329, L. 1974; R.C.M. 1947, 10-1201.

41-5-102. Declaration of purpose. The Montana Youth Court Act must be interpreted and construed to effectuate the following express legislative purposes:

(1) to preserve the unity and welfare of the family whenever possible and to provide for the care, protection, and wholesome mental and physical development of a youth coming within the provisions of the Montana Youth Court Act;

(2) to prevent and reduce youth delinquency through a system that does not seek retribution but that provides:

(a) immediate, consistent, enforceable, and avoidable consequences of youths' actions;

(b) a program of supervision, care, rehabilitation, detention, competency development, and community protection for youth before they become adult offenders; and

(c) in appropriate cases, restitution as ordered by the youth court;

(3) to achieve the purposes of subsections (1) and (2) in a family environment whenever possible, separating the youth from the parents only when necessary for the welfare of the youth or for the safety and protection of the community;

(4) to provide judicial procedures in which the parties are ensured a fair, accurate hearing and recognition and enforcement of their constitutional and statutory rights.

History: En. 10-1202 by Sec. 2, Ch. 329, L. 1974; R.C.M. 1947, 10-1202; amd. Sec. 1, Ch. 246, L. 1979; amd. Sec. 3, Ch. 528, L. 1995; amd. Sec. 1, Ch. 537, L. 1999.

Cross-References

Application of Montana Rules of Civil Procedure to this chapter, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Action on reporting, 41-3-202.

Abuse or neglect proceedings, Title 41, ch. 3, part 4.

Recognition of parental control of children -- placement with extended family, 52-2-102.

41-5-103. Definitions. As used in the Montana Youth Court Act, unless the context requires otherwise, the following definitions apply:

(1) "Adult" means an individual who is 18 years of age or older.

(2) "Agency" means any entity of state or local government authorized by law to be responsible for the care or rehabilitation of youth.

(3) "Assessment officer" means a person who is authorized by the court to provide initial intake and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth.

(4) "Commit" means to transfer legal custody of a youth to the department or to the youth court.

(5) "Correctional facility" means a public or private, physically secure residential facility under contract with the department and operated solely for the purpose of housing adjudicated delinquent youth.

(6) "Cost containment funds" means funds retained by the department under 41-5-132 for distribution by the cost containment review panel.

(7) "Cost containment review panel" means the panel established in 41-5-131.

(8) "Court", when used without further qualification, means the youth court of the district court.

(9) "Criminally convicted youth" means a youth who has been convicted in a district court pursuant to 41-5-206.

(10) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the youth has been given but does not include a person who has only physical custody.

(11) "Delinquent youth" means a youth who is adjudicated under formal proceedings under the Montana Youth Court Act as a youth:

(a) who has committed an offense that, if committed by an adult, would constitute a criminal offense; or

(b) who has been placed on probation as a delinquent youth and who has violated any condition of probation.

(12) "Department" means the department of corrections provided for in 2-15-2301.

(13) "Department records" means information or data, either in written or electronic form, maintained by the department pertaining to youth who are committed under 41-5-1512(1)(c) or 41-5-1513(1)(b) or who are under parole supervision. Department records do not include information provided by the department to the department of public health and human services' management information system.

(14) "Detention" means the holding or temporary placement of a youth in the youth's home under home arrest or in a facility other than the youth's own home for:

(a) the purpose of ensuring the continued custody of the youth at any time after the youth is taken into custody and before final disposition of the youth's case;

(b) contempt of court or violation of a valid court order; or

(c) violation of a youth parole agreement.

(15) "Detention facility" means a physically restricting facility designed to prevent a youth from departing at will. The term includes a youth detention facility, short-term detention center, and regional detention facility.

(16) "Emergency placement" means placement of a youth in a youth care facility for less than 45 days to protect the youth when there is no alternative placement available.

(17) "Family" means the parents, guardians, legal custodians, and siblings or other youth with whom a youth ordinarily lives.

(18) "Final disposition" means the implementation of a court order for the disposition or placement of a youth as provided in 41-5-1422, 41-5-1503, 41-5-1504, 41-5-1512, 41-5-1513, and 41-5-1522 through 41-5-1525.

(19) "Foster home" means a private residence licensed by the department of public health and human services for placement of a youth.

(20) "Guardian" means an adult:

(a) who is responsible for a youth and has the reciprocal rights, duties, and responsibilities with the youth; and

(b) whose status is created and defined by law.

(21) "Habitual truancy" means recorded absences of 10 days or more of unexcused absences in a semester or absences without prior written approval of a parent or a guardian.

(22) "Holdover" means a room, office, building, or other place approved by the board of crime control for the temporary detention and supervision of youth in a physically unrestricting setting for a period not to exceed 24 hours while the youth is awaiting a probable cause hearing, release, or transfer to an appropriate detention or shelter care facility. The term does not include a jail.

(23) "Jail" means a facility used for the confinement of adults accused or convicted of criminal offenses. The term includes a lockup or other facility used primarily for the temporary confinement of adults after arrest but does not include a collocated juvenile detention facility that complies with 28 CFR, part 31.

(24) "Judge", when used without further qualification, means the judge of the youth court.

(25) "Juvenile home arrest officer" means a court-appointed officer administering or supervising juveniles in a program for home arrest, as provided for in Title 46, chapter 18, part 10.

(26) "Law enforcement records" means information or data, either in written or electronic form, maintained by a law enforcement agency, as defined in 7-32-201, pertaining to a youth covered by this chapter.

(27) (a) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to:

(i) have physical custody of the youth;

(ii) determine with whom the youth shall live and for what period;

(iii) protect, train, and discipline the youth; and

(iv) provide the youth with food, shelter, education, and ordinary medical care.

(b) An individual granted legal custody of a youth shall personally exercise the individual's rights and duties as guardian unless otherwise authorized by the court entering the order.

(28) "Necessary parties" includes the youth and the youth's parents, guardian, custodian, or spouse.

(29) "Out-of-home placement" means placement of a youth in a program, facility, or home, other than a custodial parent's home, for purposes other than preadjudicatory

detention. The term does not include shelter care or emergency placement of less than 45 days.

(30) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless the putative father's paternity is established by an adjudication or by other clear and convincing proof.

(31) "Probable cause hearing" means the hearing provided for in 41-5-332.

(32) "Regional detention facility" means a youth detention facility established and maintained by two or more counties, as authorized in 41-5-1804.

(33) "Restitution" means payments in cash to the victim or with services to the victim or the general community when these payments are made pursuant to a consent adjustment, consent decree, or other youth court order.

(34) "Running away from home" means that a youth has been reported to have run away from home without the consent of a parent or guardian or a custodian having legal custody of the youth.

(35) "Secure detention facility" means a public or private facility that:

(a) is used for the temporary placement of youth or individuals accused or convicted of criminal offenses or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order; and

(b) is designed to physically restrict the movements and activities of youth or other individuals held in lawful custody of the facility.

(36) "Serious juvenile offender" means a youth who has committed an offense that would be considered a felony offense if committed by an adult and that is an offense against a person, an offense against property, or an offense involving dangerous drugs.

(37) "Shelter care" means the temporary substitute care of youth in physically unrestricting facilities.

(38) "Shelter care facility" means a facility used for the shelter care of youth. The term is limited to the facilities enumerated in 41-5-347.

(39) "Short-term detention center" means a detention facility licensed by the department for the temporary placement or care of youth, for a period not to exceed 10 days excluding weekends and legal holidays, pending a probable cause hearing, release, or transfer of the youth to an appropriate detention facility, youth assessment center, or shelter care facility.

(40) "State youth correctional facility" means the Pine Hills youth correctional facility in Miles City or the Riverside youth correctional facility in Boulder.

(41) "Substitute care" means full-time care of youth in a residential setting for the purpose of providing food, shelter, security and safety, guidance, direction, and, if necessary, treatment to youth who are removed from or are without the care and supervision of their parents or guardians.

(42) "Victim" means:

(a) a person who suffers property, physical, or emotional injury as a result of an offense committed by a youth that would be a criminal offense if committed by an adult;

(b) an adult relative of the victim, as defined in subsection (42)(a), if the victim is a minor; and

(c) an adult relative of a homicide victim.

(43) "Youth" means an individual who is less than 18 years of age without regard to sex or emancipation.

(44) "Youth assessment" means a multidisciplinary assessment of a youth as provided in 41-5-1203.

(45) "Youth assessment center" means a staff-secured location that is licensed by the department of public health and human services to hold a youth for up to 10 days for the purpose of providing an immediate and comprehensive community-based youth assessment to assist the youth and the youth's family in addressing the youth's behavior.

(46) "Youth care facility" has the meaning provided in 52-2-602.

(47) "Youth court" means the court established pursuant to this chapter to hear all proceedings in which a youth is alleged to be a delinquent youth or a youth in need of intervention and includes the youth court judge, probation officers, and assessment officers.

(48) "Youth court records" means information or data, either in written or electronic form, maintained by the youth court pertaining to a youth under jurisdiction of the youth court and includes reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, orders and decrees, youth assessment materials, predispositional studies, and supervision records of probationers. Youth court records do not include information provided by the youth court to the department of public health and human services' management information system.

(49) "Youth detention facility" means a secure detention facility licensed by the department for the temporary substitute care of youth that is:

(a) (i) operated, administered, and staffed separately and independently of a jail; or

(ii) a collocated secure detention facility that complies with 28 CFR, part 31; and

(b) used exclusively for the lawful detention of alleged or adjudicated delinquent youth or as a sanction for contempt of court, violation of a parole agreement, or violation of a valid court order.

(50) "Youth in need of intervention" means a youth who is adjudicated as a youth and who:

(a) commits an offense prohibited by law that if committed by an adult would not constitute a criminal offense, including but not limited to a youth who:

(i) violates any Montana municipal or state law regarding alcoholic beverages; or

(ii) continues to exhibit behavior, including running away from home or habitual truancy, beyond the control of the youth's parents, foster parents, physical custodian, or guardian despite the attempt of the youth's parents, foster parents, physical custodian,

or guardian to exert all reasonable efforts to mediate, resolve, or control the youth's behavior; or

(b) has committed any of the acts of a delinquent youth but whom the youth court, in its discretion, chooses to regard as a youth in need of intervention.

History: Ap.p. Sec. 3, Ch. 329, L. 1974; amd. Sec. 1, Ch. 571, L. 1977; Sec. 10-1203, R.C.M. 1947; Ap.p. Sec. 2, Ch. 427, L. 1971; Sec. 10-1102, R.C.M. 1947; amd. and redes. 10-1243 by Sec. 43, Ch. 329, L. 1974; amd. Sec. 15, Ch. 571, L. 1977; Sec. 10-1243, R.C.M. 1947; R.C.M. 1947, 10-1203, 10-1243; amd. Sec. 2, Ch. 246, L. 1979; amd. Sec. 1, Ch. 233, L. 1983; amd. Sec. 2, Ch. 465, L. 1983; amd. Sec. 6, Ch. 475, L. 1987; amd. Sec. 1, Ch. 515, L. 1987; amd. Sec. 54, Ch. 609, L. 1987; amd. Sec. 1, Ch. 231, L. 1991; amd. Sec. 2, Ch. 547, L. 1991; amd. Sec. 2, Ch. 548, L. 1991; amd. Secs. 1, 29, Ch. 799, L. 1991; amd. Sec. 191, Ch. 546, L. 1995; amd. Sec. 191, Ch. 42, L. 1997; amd. Sec. 2, Ch. 189, L. 1997; amd. Sec. 3, Ch. 286, L. 1997; amd. Sec. 13, Ch. 550, L. 1997; amd. Sec. 1, Ch. 106, L. 1999; amd. Sec. 1, Ch. 326, L. 1999; amd. Sec. 1, Ch. 532, L. 1999; amd. Sec. 54, Ch. 7, L. 2001; amd. Sec. 2, Ch. 114, L. 2001; amd. Sec. 1, Ch. 576, L. 2001; amd. Sec. 1, Ch. 587, L. 2001; amd. Sec. 81, Ch. 114, L. 2003; amd. Sec. 1, Ch. 188, L. 2003.

Compiler's Comments

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2003 Amendments -- Composite Section: Chapter 114 in definition of youth assessment at end substituted "41-5-1203" for "41-5-1201". Amendment effective October 1, 2003.

Chapter 188 in definition of delinquent youth in (b) after "youth" deleted "or a youth in need of intervention"; and made minor changes in style. Amendment effective March 31, 2003.

Cross-References

Compulsory attendance and excuses, 20-5-103.

Minors and adults defined, 41-1-101.

State grants for youth detention services, Title 41, ch. 5, part 19.

Youth residential services, Title 52, ch. 2, part 6.

Guardians of minors, Title 72, ch. 5, part 2.

41-5-104. County commissioners authorized to provide funds. (1) The county commissioners of all counties are hereby authorized, empowered, and required to provide the necessary funds and to make all needful appropriations to carry out the provisions of this chapter.

(2) Each county shall pay its portion of the costs of the youth court based:

(a) on actual costs incurred in or on behalf of the county; or

(b) if actual costs cannot be identified, on each county's proportion of the total youth court workload in the judicial district during the calendar year preceding the setting of the budget.

(3) The youth court judge shall, in January of each year, establish the proportion of the workload of the court to be attributed to each county in the ensuing budget year for purposes of any necessary application of subsection (2)(b).

History: En. Sec. 30, Ch. 227, L. 1943; Sec. 10-631, R.C.M. 1947; redes. 10-1239 by Sec. 39, Ch. 329, L. 1974; R.C.M. 1947, 10-1239; amd. Sec. 1, Ch. 580, L. 1985.

Cross-References

County levy for District Court expenses, 7-6-2511.

41-5-105. Youth court committee. In every county of the state the judge having jurisdiction may appoint a committee, willing to act without compensation, composed of not less than three or more than seven reputable citizens, including youth representatives. The committee must be designated as a youth court committee. This committee shall meet subject to the call of the judge to confer with him on all matters pertaining to the youth department of the court, including the appointment of probation officers, and shall act as a supervisory committee of youth detention facilities.

History: En. Sec. 27, Ch. 227, L. 1943; amd. Sec. 1, Ch. 128, L. 1957; amd. Sec. 13, Ch. 262, L. 1969; Sec. 10-628, R.C.M. 1947; amd. and redes. 10-1240 by Sec. 40, Ch. 329, L. 1974; R.C.M. 1947, 10-1240; amd. Sec. 19, Ch. 799, L. 1991.

Cross-References

Appointment of probation officers, 41-5-1701.

41-5-106. Order of adjudication -- noncriminal. No placement of any youth in any state youth correctional facility under this chapter shall be deemed commitment to a penal institution. No adjudication upon the status of any youth in the jurisdiction of the court shall operate to impose any of the civil disability imposed on a person by reason of conviction of a criminal offense, nor shall such adjudication be deemed a criminal conviction, nor shall any youth be charged with or convicted of any crime in any court except as provided in this chapter. Neither the disposition of a youth under this chapter nor evidence given in youth court proceedings under this chapter shall be admissible in evidence except as otherwise provided in this chapter.

History: En. 10-1235 by Sec. 35, Ch. 329, L. 1974; amd. Sec. 11, Ch. 571, L. 1977; R.C.M. 1947, 10-1235; amd. Sec. 55, Ch. 609, L. 1987.

Cross-References

Youth Court and Department records, 41-5-215.
Investigation, fingerprints, and photographs, 41-5-1206.
Communications privileged, 41-5-1303.
Right to counsel, 41-5-1413.
Admissibility of confession or illegally seized evidence, 41-5-1415.

Disposition of youth in need of intervention or youth who violate consent adjustments, 41-5-1512.

41-5-107. Administration. The provisions of Title 52, chapter 2, part 6, govern the administration of this chapter.

History: En. Sec. 30, Ch. 465, L. 1983.

41-5-108 and 41-5-109 reserved.

41-5-110. Youth court hearings -- priority. All hearings and other court appearances required under Title 41, chapter 5, must be given priority by the court and must be scheduled to be heard as expeditiously as possible.

History: En. Sec. 15, Ch. 515, L. 1987.

41-5-111. Court costs and expenses. The following expenses must be a charge upon the funds of the court or other appropriate agency when applicable, upon their certification by the court:

- (1) reasonable compensation for services and related expenses for counsel appointed by the court for a party;
- (2) the expenses of service of summons, notices, subpoenas, traveling expenses of witnesses, and other like expenses incurred in any proceeding under the Montana Youth Court Act as provided for by law;
- (3) reasonable compensation of a guardian ad litem appointed by the court; and
- (4) cost of transcripts and printing briefs on appeal.

History: En. 10-1226 by Sec. 26, Ch. 329, L. 1974; R.C.M. 1947, 10-1226; amd. Sec. 6, Ch. 363, L. 1983; amd. Sec. 1, Ch. 737, L. 1985; amd. Sec. 2, Ch. 11, Sp. L. June 1986; amd. Sec. 6, Ch. 14, Sp. L. June 1986; Sec. 41-5-207, MCA 1995; redes. 41-5-111 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 5, Ch. 583, L. 2003.

Compiler's Comments

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2003 Amendment: Chapter 583 deleted former (1) that read: "(1) the costs of medical and other examinations and treatment of a youth ordered by the court"; and made minor changes in style. Amendment effective July 1, 2003.

41-5-112. Parental contributions account -- allocation of proceeds. (1) There is a parental contributions account in the state special revenue fund.

(2) Contributions paid by the parents and guardians of youth under 41-3-446, 41-5-1501, or 41-5-1525 must be deposited in the account.

(3) All money in the account, except any amount required to be returned to federal or county sources, is allocated to the department of public health and human services to carry out its duties under 52-1-103.

History: En. Sec. 6, Ch. 696, L. 1991; amd. Sec. 196, Ch. 546, L. 1995; amd. Secs. 40, 49(3)(f), Ch. 286, L. 1997; amd. Sec. 15, Ch. 516, L. 1997; Sec. 41-5-530, MCA 1995; redes. 41-5-112 by Sec. 47, Ch. 286, L. 1997.

41-5-113 through 41-5-120 reserved.

41-5-121. Youth placement committees -- composition. (1) In each judicial district, the youth court and the department shall establish a youth placement committee for the purposes of:

(a) recommending an appropriate placement of a youth referred to the youth court or the department under 41-5-1512 and 41-5-1513; or

(b) recommending available community services or alternative placements whenever a change is required in the placement of a youth who is currently in the custody of the department under 41-5-1512 or 41-5-1513. However, the committee may not substitute its judgment for that of the superintendent of a state youth correctional facility regarding the discharge of a youth from the facility.

(2) (a) The committee consists of not less than five members and must include persons who are knowledgeable about the youth, treatment and placement options, and other resources appropriate to address the needs of the youth.

(b) The committee must include:

(i) a juvenile parole officer employed by the department;

(ii) a representative of the department of public health and human services;

(iii) the chief probation officer or the chief probation officer's designee, who is the presiding officer of the committee;

(iv) a mental health professional; and

(v) if an Indian youth is involved, a person, preferably an Indian, knowledgeable about Indian culture and Indian family matters.

(c) The committee may include:

(i) a representative of a school district located within the boundaries of the judicial district who has knowledge of and experience with youth;

(ii) the youth's parent or guardian;

(iii) a youth services provider; and

(iv) the youth's probation officer.

(3) The youth court judge shall appoint all members of the youth placement committee except the juvenile parole officer. The director of the department shall appoint the juvenile parole officer and shall, when making the appointment, take into consideration:

(a) the juvenile parole officer's qualifications;

(b) the costs involved in the juvenile parole officer's attendance at youth placement committee meetings; and

(c) the location of the juvenile parole officer's home in relation to the location of the youth placement committee.

(4) Committee members serve without compensation.

(5) Notwithstanding the provisions of 41-5-123, the committee may be convened by the department or the probation officer of the youth court.

(6) If a representative of the school district within the boundaries of which the youth is recommended to be placed and will be attending school is not included on the committee, the person who convened the committee shall inform the school district of the final placement decision for the youth.

(7) The department may not disburse funds from the budget allocation accounts established pursuant to 41-5-130 unless the youth court and the department have established a youth placement committee as provided in this section.

History: En. Sec. 15, Ch. 609, L. 1987; amd. Sec. 2, Ch. 67, L. 1989; amd. Sec. 1, Ch. 403, L. 1995; amd. Sec. 38, Ch. 286, L. 1997; amd. Sec. 43, Ch. 550, L. 1997; Sec. 41-5-525, MCA 1995; redes. 41-5-121 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 2, Ch. 532, L. 1999; amd. Sec. 2, Ch. 587, L. 2001; amd. Sec. 1, Ch. 266, L. 2003.

Compiler's Comments

<Y2003

2003 Amendment: Chapter 266 in (1) in introductory clause after "youth court" inserted "and the department"; inserted (3) concerning the appointment of members of the youth placement committee; in (7) near middle after "youth court" inserted "and the department"; and made minor changes in style. Amendment effective October 1, 2003.

41-5-122. Duties of youth placement committee. A youth placement committee shall:

(1) review all information relevant to the placement of a youth;

(2) consider available resources appropriate to meet the needs of the youth;

(3) consider the treatment recommendations of any professional person who has evaluated the youth;

(4) consider options for the financial support of the youth;

(5) recommend in writing to the youth court judge or the department an appropriate placement for the youth, considering the age and treatment needs of the youth and the relative costs of care in facilities considered appropriate for placement. A committee shall consider placement in a licensed facility, at a state youth correctional facility, or with a parent, other family member, or guardian.

(6) review temporary and emergency placements as required under 41-5-124; and

(7) conduct placement reviews at least every 6 months and at other times as requested by the youth court.

History: En. Sec. 16, Ch. 609, L. 1987; amd. Sec. 1, Ch. 399, L. 1989; amd. Sec. 2, Ch. 403, L. 1995; Sec. 41-5-526, MCA 1995; redes. 41-5-122 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 3, Ch. 587, L. 2001.

41-5-123. Judicial districts not participating in juvenile delinquency intervention program -- youth placement committee to submit recommendation to department -- acceptance or rejection of recommendation by department. (1) Prior to commitment of a youth to the department pursuant to 41-5-1512 or 41-5-1513, a youth placement committee must be convened. The committee shall submit in writing to the department and to the youth court judge its primary and alternative recommendations for placement of the youth.

(2) If the department accepts either of the committee's recommendations, it shall promptly notify the committee in writing.

(3) If the department rejects both of the committee's recommendations, it shall promptly notify the committee in writing of the reasons for rejecting the recommendations and shall make an appropriate placement for the youth.

(4) Within 72 hours after making a decision on a placement or change of placement, the department shall notify the youth court of the decision and of the placement or change of placement.

(5) This section applies only in judicial districts that do not participate in the juvenile delinquency intervention program administered by the department under 41-5-2003.

History: En. Sec. 17, Ch. 609, L. 1987; amd. Sec. 2, Ch. 399, L. 1989; amd. Sec. 3, Ch. 403, L. 1995; amd. Sec. 39, Ch. 286, L. 1997; Sec. 41-5-527, MCA 1995; redes. 41-5-123 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 4, Ch. 587, L. 2001.

41-5-124. Temporary and emergency placements -- limit. (1) A temporary placement of a youth in a shelter care facility or an emergency placement of a youth in a youth care facility is exempt from the requirements of 41-5-123.

(2) If a temporary or emergency placement of a youth continues for 45 or more days, the department shall refer the placement of the youth to the appropriate youth placement committee for review. The committee shall make a recommendation for placement to the youth court in accordance with 41-5-123.

History: En. Sec. 18, Ch. 609, L. 1987; Sec. 41-5-528, MCA 1995; redes. 41-5-124 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 5, Ch. 587, L. 2001.

41-5-125. Confidentiality of youth placement committee meetings and records. (1) Meetings of a youth placement committee are closed to the public to protect a youth's right to individual privacy.

(2) Information presented to the committee about a youth and committee records are confidential and subject to confidentiality requirements established by rule by the department.

History: En. Sec. 19, Ch. 609, L. 1987; Sec. 41-5-529, MCA 1995; redes. 41-5-125 by Sec. 47, Ch. 286, L. 1997.

41-5-126 through 41-5-129 reserved.

41-5-130. Participating and nonparticipating jurisdictions. (1) Each judicial district may elect to participate in the juvenile delinquency intervention program.

(2) A jurisdiction that elects to participate in the program may expend funds from a juvenile placement fund for out-of-home placements or for other services intended to reduce or prevent juvenile delinquency subject to restrictions in this chapter and administrative rules adopted by the department.

(3) A jurisdiction that does not elect to participate in the program may commit youth to the department for out-of-home placements pursuant to this chapter.

(4) A jurisdiction that has not previously participated in the program may elect to participate in the program prior to the start of a new biennium. Participation must be for a complete biennium. A jurisdiction may elect to discontinue participation in future bienniums upon 3 months' written notice to the department prior to the beginning of the next biennium.

(5) A youth court that does not participate in the program may not expend any juvenile placement funds for placements or services unless approved by the department pursuant to 41-5-123.

(6) The department shall establish an account for each judicial district in order to administer a juvenile placement fund as appropriated by the legislature. The accounts must be used by the youth courts for funding out-of-home placements.

History: En. Sec. 11, Ch. 587, L. 2001.

41-5-131. Cost containment review panel. (1) The department shall establish a cost containment review panel.

(2) The cost containment review panel shall consist of the following members appointed by the department:

- (a) two members from the department of corrections;
- (b) a member from the department of public health and human services;
- (c) a representative from the field of mental health;
- (d) a youth court judge;
- (e) two chief juvenile probation officers;
- (f) a county commissioner; and
- (g) a representative of the youth justice council.

(3) Decisions of the cost containment review panel must be by majority vote.

(4) The cost containment review panel shall determine the distribution of funds allocated in 41-5-132.

(5) The cost containment review panel may evaluate the effectiveness of new or innovative programs for the treatment of troubled youth and make recommendations to the youth courts and the department.

(6) A youth court shall request funds from the cost containment review panel prior to exceeding its account allocation under 41-5-130. If a panel member referred to in subsections (2)(d) through (2)(g) is a resident of or is employed in the judicial district of a youth court requesting cost containment funds, the panel member may not serve as a panel member for purposes of a decision regarding disbursement of cost containment funds to the youth court and an alternate panel member must be appointed by the department for purposes of the decision.

History: En. Sec. 17, Ch. 587, L. 2001.

41-5-132. Cost containment fund -- allocation of appropriated funds -- use of funds. (1) The department of corrections shall establish a cost containment fund for the purposes of 41-5-131 and shall allocate to the fund not less than \$1 million each fiscal year from the funds appropriated for the juvenile placement budget for the fiscal biennium beginning July 1, 2001, to be used for the purposes of 41-5-131.

(2) The department shall determine the amount of the cost containment fund at the beginning of each fiscal year. The cost containment review panel shall submit a recommended amount to be allocated to the cost containment fund at least 1 month prior to the start of a new fiscal year.

History: En. Sec. 20, Ch. 587, L. 2001.

Part 2

Youth Court -- Jurisdiction -- Records

41-5-201. Youth court judge -- judges pro tempore -- special masters. (1) Each judicial district in the state must have at least one judge of the youth court whose duties are to:

(a) appoint and supervise qualified personnel to staff the youth division probation departments within the judicial district;

(b) conduct hearings on youth court proceedings under this chapter;

(c) perform any other functions consistent with the legislative purpose of this chapter.

(2) In each multijudge judicial district the judges shall, by court rule, designate one or more of their number to act as youth court judge in each county in the judicial district for a fixed period of time. Service as youth court judge may be rotated among the different judges of the judicial district and among the individual counties within the judicial district for given periods of time. Continuity of service of a given judge as youth

court judge and continuity in the operation and policies of the youth court in the county having the largest population in the judicial district must be the principal consideration of the rule.

(3) (a) A youth court judge may appoint a judge pro tempore or a special master to conduct preliminary, nondispositive matters, including but not limited to hearings for probable cause or detention and taking of responses for petitions.

(b) A judge pro tempore or special master must be a member of the state bar of Montana.

History: En. 10-1233 by Sec. 33, Ch. 329, L. 1974; R.C.M. 1947, 10-1233(part); amd. Sec. 1, Ch. 60, L. 1985; amd. Sec. 14, Ch. 550, L. 1997.

Cross-References

District Court Judges, Title 3, ch. 5, part 2.

Proceeding on petition, Title 41, ch. 5, part 14.

Appointment of probation officers, 41-5-1701.

41-5-202. Renumbered 41-5-1405. Sec. 47, Ch. 286, L. 1997.

41-5-203. Jurisdiction of court. (1) Except as provided in subsection (2) and for cases filed in the district court under 41-5-206, the court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth or a youth in need of intervention or concerning any person under 21 years of age charged with having violated any law of the state or any ordinance of a city or town other than a traffic or fish and game law prior to having become 18 years of age.

(2) Justices', municipal, and city courts have concurrent jurisdiction with the youth court over all alcoholic beverage, tobacco products, and gambling violations alleged to have been committed by a youth.

(3) The court has jurisdiction to:

(a) transfer a youth court case to the district court after notice and hearing;

(b) with respect to extended jurisdiction juvenile cases:

(i) designate a proceeding as an extended jurisdiction juvenile prosecution;

(ii) conduct a hearing, receive admissions, and impose upon a youth who is adjudicated as an extended jurisdiction juvenile a sentence that may extend beyond the youth's age of majority;

(iii) stay that portion of an extended jurisdiction sentence that is extended beyond a youth's majority, subject to the performance of the juvenile portion of the sentence;

(iv) continue, modify, or revoke the stay after notice and hearing;

(v) after revocation, transfer execution of the stayed sentence to the department;

(vi) transfer supervision of any juvenile sentence if, after notice and hearing, the court determines by a preponderance of the evidence that the juvenile has violated or failed to perform the juvenile portion of an extended jurisdiction sentence; and

(vii) transfer a juvenile case to district court after notice and hearing; and
(c) impose criminal sanctions on a juvenile as authorized by the Extended Jurisdiction Prosecution Act, Title 41, chapter 5, part 16.

History: En. 10-1206 by Sec. 6, Ch. 329, L. 1974; amd. Sec. 3, Ch. 100, L. 1977; amd. Sec. 1, Ch. 446, L. 1977; R.C.M. 1947, 10-1206; amd. Sec. 1, Ch. 427, L. 1979; amd. Sec. 22, Ch. 626, L. 1993; amd. Sec. 2, Ch. 376, L. 1995; amd. Sec. 1, Ch. 498, L. 1997; amd. Secs. 15, 76, Ch. 550, L. 1997; amd. Sec. 3, Ch. 114, L. 2001; amd. Sec. 2, Ch. 576, L. 2001.

Cross-References

Municipal Courts -- jurisdiction, 3-6-103.
Justices' Courts -- criminal jurisdiction, 3-10-303.
City Courts -- concurrent jurisdiction, 3-11-102.
Jurisdiction of courts -- misdemeanor alcohol violations, 16-6-201.
Evidence in administrative proceedings, 23-5-138.
Concurrent jurisdiction and venue, 41-3-103.
Priority of Youth Court hearings, 41-5-110.
Unlawful attempt to purchase or possession of intoxicating substance, 45-5-624.
Tobacco possession or consumption by persons under 18 years of age prohibited -- penalties, 45-5-637.
Criminal possession of toxic substances, 45-9-121.

41-5-204. Venue and transfer. (1) The county where a youth is a resident or is alleged to have violated the law has initial jurisdiction over any youth alleged to be a delinquent youth. Except as provided in 41-5-206, the youth court shall assume the initial handling of the case.

(2) The county where a youth is a resident has initial jurisdiction over any youth alleged to be a youth in need of intervention. The youth court of that county shall assume the initial handling of the case. Transfers of venue may be made to any of the following counties in the state:

- (a) the county in which the youth is apprehended or found;
- (b) the county in which the youth is alleged to have violated the law; or
- (c) the county of residence of the youth's parents or guardian.

(3) In the case of a youth alleged to be a youth in need of intervention, a change of venue may be ordered at any time by the concurrence of the youth court judges of both counties in order to ensure a fair, impartial, and speedy hearing and final disposition of the case.

(4) In the case of a youth 16 years of age or older who is accused of one of the serious offenses listed in 41-5-206 and who is to be tried in district court, the charge must be filed and trial held in the district court of the county where the offense occurred.

History: En. 10-1207 by Sec. 7, Ch. 329, L. 1974; R.C.M. 1947, 10-1207; amd. Sec. 2, Ch. 60, L. 1985; amd. Sec. 16, Ch. 550, L. 1997; amd. Sec. 4, Ch. 114, L. 2001.

Cross-References

Residence -- rules for determining, 1-1-215.
District Court original jurisdiction, 3-5-302.
Concurrent jurisdiction and venue, 41-3-103.
Place of trial -- proper venue, 46-3-111.

41-5-205. Retention of jurisdiction -- termination. (1) The court may dismiss a petition or otherwise terminate jurisdiction on its own motion or on the motion or petition of any interested party at any time. Unless terminated by the court and except as provided in subsections (2) and (3), the jurisdiction of the court continues until the individual becomes 21 years of age.

(2) Court jurisdiction terminates when:

(a) the proceedings are transferred to district court under 41-5-208 or an information is filed concerning the offense in district court pursuant to 41-5-206;
(b) the youth is discharged by the department; or
(c) execution of a sentence is ordered under 41-5-1605(2)(b)(iii) and the supervisory responsibilities are transferred to the district court under 41-5-1605.

(3) The jurisdiction of the court over an extended jurisdiction juvenile, with respect to the offense for which the youth was convicted as an extended jurisdiction juvenile, extends until the offender becomes 25 years of age unless the court terminates jurisdiction before that date.

(4) The jurisdiction of the court is not terminated if the department issues a release from supervision due to the expiration of a commitment pursuant to 41-5-1522.

History: En. 10-1208 by Sec. 8, Ch. 329, L. 1974; R.C.M. 1947, 10-1208; amd. Sec. 56, Ch. 609, L. 1987; amd. Sec. 2, Ch. 498, L. 1997; amd. Sec. 6, Ch. 587, L. 2001.

Cross-References

Minors and adults defined, 41-1-101.
Concurrent jurisdiction and venue, 41-3-103.
Disposition permitted under consent adjustment -- contributions for youth's care, 41-5-1304.
Disposition of youth in need of intervention or youth who violate consent adjustments, 41-5-1512.
State youth correctional facilities -- jurisdiction of Department to age 18, 52-5-101.

41-5-206. Filing in district court prior to formal proceedings in youth court. (1) The county attorney may, in the county attorney's discretion and in accordance with the procedure provided in 46-11-201, file with the district court a motion for leave to file an information in the district court if:

(a) the youth charged was 12 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act would if it had been committed by an adult constitute:

- (i) sexual intercourse without consent as defined in 45-5-503;
- (ii) deliberate homicide as defined in 45-5-102;
- (iii) mitigated deliberate homicide as defined in 45-5-103;
- (iv) assault on a peace officer or judicial officer as defined in 45-5-210; or
- (v) the attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for either deliberate or mitigated deliberate homicide; or

(b) the youth charged was 16 years of age or older at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

- (i) negligent homicide as defined in 45-5-104;
- (ii) arson as defined in 45-6-103;
- (iii) aggravated assault as defined in 45-5-202;
- (iv) assault with a weapon as defined in 45-5-213;
- (v) robbery as defined in 45-5-401;
- (vi) burglary or aggravated burglary as defined in 45-6-204;
- (vii) aggravated kidnapping as defined in 45-5-303;
- (viii) possession of explosives as defined in 45-8-335;
- (ix) criminal distribution of dangerous drugs as defined in 45-9-101;
- (x) criminal possession of dangerous drugs as defined in 45-9-102(4) and (5);
- (xi) criminal possession with intent to distribute as defined in 45-9-103(1);
- (xii) criminal production or manufacture of dangerous drugs as defined in 45-9-110;
- (xiii) use of threat to coerce criminal street gang membership or use of violence to coerce criminal street gang membership, as defined in 45-8-403;
- (xiv) escape as defined in 45-7-306;
- (xv) attempt, as defined in 45-4-103, of or accountability, as provided in 45-2-301, for any of the acts enumerated in subsections (1)(b)(i) through (1)(b)(xiv).

(2) The county attorney shall file with the district court a petition for leave to file an information in district court if the youth was 17 years of age at the time the youth committed an offense listed under subsection (1).

(3) The district court shall grant leave to file the information if it appears from the affidavit or other evidence supplied by the county attorney that there is probable cause to believe that the youth has committed the alleged offense. Within 30 days after leave to file the information is granted, the district court shall conduct a hearing to determine whether the matter must be transferred back to the youth court, unless the hearing is waived by the youth or by the youth's counsel in writing or on the record. The hearing may be continued on request of either party for good cause. The district court may not transfer the case back to the youth court unless the district court finds, by a preponderance of the evidence, that:

(a) a youth court proceeding and disposition will serve the interests of community protection;

(b) that the nature of the offense does not warrant prosecution in district court; and

(c) it would be in the best interests of the youth if the matter was prosecuted in youth court.

(4) The filing of an information in district court terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the information. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been filed in the district court as provided in this section. A case may be transferred to district court after prosecution as provided in 41-5-208 or 41-5-1605.

(5) An offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1) upon motion of the county attorney and order of the district court. The district court shall hold a hearing before deciding the motion.

(6) If a youth is found guilty in district court of an offense enumerated in subsection (1), the court shall sentence the youth pursuant to 41-5-2503 and Titles 45 and 46. A youth who is sentenced to the department or a state prison must be evaluated and placed by the department in an appropriate juvenile or adult correctional facility. The department shall confine the youth in an institution that it considers proper, including a state youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in a state prison facility. During the period of confinement, school-aged youth with disabilities must be provided an education consistent with the requirements of the federal Individuals With Disabilities Education Act, 20 U.S.C. 1400, et seq.

(7) If a youth's case is filed in the district court and remains in the district court after the transfer hearing, the youth may be detained in a jail or other adult detention facility pending final disposition of the youth's case if the youth is kept in an area that provides physical separation from adults accused or convicted of criminal offenses.

History: En. 10-1229 by Sec. 29, Ch. 329, L. 1974; amd. Sec. 9, Ch. 100, L. 1977; R.C.M. 1947, 10-1229; amd. Sec. 1, Ch. 484, L. 1981; amd. Sec. 3, Ch. 60, L. 1985; amd. Sec. 100, Ch. 370, L. 1987; amd. Sec. 3, Ch. 515, L. 1987; amd. Sec. 57, Ch. 609, L. 1987; amd. Sec. 4, Ch. 434, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 6, Ch. 547, L. 1991; amd. Sec. 2, Ch. 448, L. 1993; amd. Sec. 7, Ch. 438, L. 1995; amd. Sec. 192, Ch. 546, L. 1995; amd. Sec. 9, Ch. 285, L. 1997; amd. Sec. 18, Ch. 550, L. 1997; amd. Sec. 2, Ch. 432, L. 1999; amd. Sec. 1, Ch. 523, L. 1999; amd. Sec. 3, Ch. 532, L. 1999; amd. Sec. 2, Ch. 537, L. 1999; amd. Sec. 55, Ch. 7, L. 2001; amd. Sec. 1, Ch. 243, L. 2001; amd. Sec. 3, Ch. 576, L. 2001.

Cross-References

- Youth Court and Department records -- notification of school, 41-5-215.
- Petition -- form and content, 41-5-1402.
- Right to counsel, 41-5-1413.
- Sentences that may be imposed -- commitment to Department of Corrections -- 5-year limit, 46-18-201.
- Commutation of sentence to state prison and transfer to youth correctional facility, 52-5-111.
- Adult offenders -- prisons, Title 53, ch. 30, part 1.

41-5-207. Renumbered 41-5-111. Sec. 47, Ch. 286, L. 1997.

41-5-208. Transfer of supervisory responsibility to district court after juvenile disposition -- nonextended jurisdiction and nontransferred cases. (1) After adjudication by the court of a case that was not transferred to district court under 41-5-206 and that was not prosecuted as an extended jurisdiction juvenile prosecution under part 16 of this chapter, the court may, on the youth's motion or the motion of the county attorney, transfer jurisdiction to the district court and order the transfer of supervisory responsibility from juvenile probation services to adult probation services. A transfer under this section may be made to ensure continued compliance with the court's disposition under 41-5-1512 or 41-5-1513 and may be made at any time after a youth reaches 18 years of age but before the youth reaches 21 years of age.

(2) Before transfer, the court shall hold a hearing on whether the transfer should be made. The hearing must be held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing must be conducted by the court without a jury. The court shall give the youth, the youth's counsel, and the youth's parents, guardian, or custodian notice in writing of the time, place, and purpose of the hearing at least 10 days before the hearing. At the hearing, the youth is entitled to receive:

- (a) written notice of the motion to transfer;
- (b) an opportunity to be heard in person and to present witnesses and evidence;
- (c) a written statement by the court of the evidence relied on and reasons for the transfer;
- (d) the right to cross-examine witnesses, unless the court finds good cause for not allowing confrontation; and
- (e) the right to counsel.

(3) After the hearing, if the court finds by a preponderance of the evidence that transfer of continuing supervisory responsibility to the district court is appropriate, the court shall order the transfer.

(4) If a youth whose case has been transferred to district court under this section violates a disposition previously imposed under 41-5-1512 or 41-5-1513, the district

court may, after hearing, impose conditions as provided under 46-18-201 through 46-18-203.

(5) If, at the time of transfer, the youth is incarcerated in a state youth correctional facility, the district court may order that the youth, after reaching 18 years of age:

(a) be incarcerated in a state adult correctional facility, boot camp, or prerelease center; or

(b) be supervised by the department.

(6) The district court's jurisdiction over a case transferred under this section terminates when the youth reaches 25 years of age.

History: En. Sec. 6, Ch. 438, L. 1995; amd. Sec. 4, Ch. 286, L. 1997; amd. Sec. 4, Ch. 498, L. 1997; amd. Sec. 19, Ch. 550, L. 1997; amd. Sec. 3, Ch. 537, L. 1999.

Cross-References

State youth correctional facilities -- jurisdiction of Department to age 18, 52-5-101.

41-5-209 through 41-5-214 reserved.

41-5-215. Youth court and department records -- notification of school. (1) Reports of preliminary inquiries, petitions, motions, other filed pleadings, court findings, verdicts, and orders and decrees on file with the clerk of court are public records and are open to public inspection until the records are sealed under 41-5-216.

(2) Social, medical, and psychological records, youth assessment materials, predispositional studies, and supervision records of probationers are open only to the following:

(a) the youth court and its professional staff;

(b) representatives of any agency providing supervision and having legal custody of a youth;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the court;

(d) any court and its probation and other professional staff or the attorney for a convicted party who had been a party to proceedings in the youth court when considering the sentence to be imposed upon the party;

(e) the county attorney;

(f) the youth who is the subject of the report or record, after emancipation or reaching the age of majority;

(g) a member of a county interdisciplinary child information team formed under 52-2-211 who is not listed in this subsection (2);

(h) members of a local interagency staffing group provided for in 52-2-203;

(i) persons allowed access to the reports referred to under 45-5-624(7); and

(j) persons allowed access under 42-3-203.

(3) (a) Notwithstanding the requirements of 20-5-321(1)(d) or (1)(e) and subject to the provisions of subsection (3)(b) of this section, the youth court shall notify the school district that the youth presently attends or the school district that the youth has applied to attend of a youth's suspected drug use or criminal activity if after an investigation has been completed:

(i) the youth has admitted the allegation or a petition has been filed with the youth court; and

(ii) a juvenile probation officer has reason to believe that a youth is currently involved with drug use or other criminal activity that has a bearing on the safety of children.

(b) Notification under subsection (3)(a) may not be given for status offenses.

(c) A school district may not refuse to accept the student if refusal violates the federal Individuals With Disabilities Education Act or the federal Americans With Disabilities Act of 1990.

(4) In all cases, a victim is entitled to all information concerning the identity and disposition of the youth, as provided in 41-5-1416.

(5) The identity of a youth who for the second or subsequent time admits violating or is adjudicated as having violated a statute must be disclosed by youth court officials to the administrative officials of the school in which the youth is a student. The administrative officials may enforce school disciplinary procedures that existed at the time of the admission or adjudication. The information may not be further disclosed and may not be made part of the student's permanent records.

(6) The school district may disclose, without consent, personally identifiable information from an education record of a pupil to the youth court and law enforcement authorities pertaining to violations of the Montana Youth Court Act or criminal laws by the pupil. The youth court or law enforcement authorities receiving the information shall certify in writing to the school district that the information will not be disclosed to any other party except as provided under state law without the prior consent of the parent or guardian of the pupil.

(7) Any part of records information secured from records listed in subsection (2), when presented to and used by the court in a proceeding under this chapter, must also be made available to the counsel for the parties to the proceedings.

History: En. 10-1231 by Sec. 31, Ch. 329, L. 1974; R.C.M. 1947, 10-1231; amd. Sec. 1, Ch. 507, L. 1979; amd. Sec. 13, Ch. 515, L. 1987; amd. Sec. 64, Ch. 609, L. 1987; amd. Sec. 4, Ch. 510, L. 1991; amd. Sec. 7, Ch. 655, L. 1991; amd. Sec. 4, Ch. 466, L. 1995; amd. Sec. 4, Ch. 481, L. 1995; amd. Sec. 1, Ch. 450, L. 1997; amd. Sec. 167, Ch. 480, L. 1997; amd. Sec. 46, Ch. 550, L. 1997; Sec. 41-5-603, MCA 1995; redes. 41-5-215 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 2, Ch. 106, L. 1999; amd. Sec. 1, Ch. 564, L. 1999; amd. Sec. 82, Ch. 114, L. 2003.

Compiler's Comments

<Y2003

2003 Amendment: Chapter 114 in (2)(i) substituted "reports" for "records"; and made minor changes in style. Amendment effective October 1, 2003.

41-5-216. Disposition of youth court, law enforcement, and department records. (1) Youth court records, law enforcement records, and department records that are not exempt from sealing under subsections (4) and (6) and that pertain to a youth covered by this chapter must be physically sealed 3 years after supervision for an offense ends. In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the records must be physically sealed upon termination of the extended jurisdiction.

(2) Except as provided in subsection (6), when the records pertaining to a youth pursuant to this section are sealed, an agency, other than the department, that has in its possession copies of the sealed records shall destroy the copies of the records. Anyone violating the provisions of this subsection is subject to contempt of court.

(3) Except as provided in subsection (6), this section does not prohibit the destruction of records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(4) The requirements for sealed records in this section do not apply to fingerprints, DNA records, photographs, youth traffic records, records in any case in which the youth did not fulfill all requirements of the court's judgment or disposition, records referred to in 42-3-203, or reports referred to in 45-5-624(7).

(5) After youth court records, law enforcement records, and department records are sealed, they are not open to inspection except, upon order of the youth court, for good cause, including when a youth commits a new offense, to:

(a) those persons and agencies listed in 41-5-215(2); and

(b) adult probation professional staff preparing a presentence report on a youth who has reached the age of majority.

(6) (a) When youth court records, law enforcement records, and department records are sealed under subsection (1), the electronic records of the management information system maintained by the department of public health and human services relating to the youth whose records are being sealed must be preserved for the express purpose of research and program evaluation as provided in subsection (6)(b).

(b) The department of public health and human services shall disassociate the offense and disposition information from the name of the youth in the management information system. The offense and disposition information must be maintained separately and may be used only:

(i) for research and program evaluation authorized by the department of public health and human services and subject to any applicable laws; and

(ii) as provided in Title 5, chapter 13.

History: En. 10-1232 by Sec. 32, Ch. 329, L. 1974; amd. Sec. 1, Ch. 59, L. 1975; R.C.M. 1947, 10-1232; amd. Sec. 2, Ch. 507, L. 1979; amd. Sec. 4, Ch. 469, L. 1981; amd. Sec. 14, Ch. 515, L. 1987; amd. Sec. 8, Ch. 251, L. 1995; amd. Sec. 10, Ch. 466, L. 1995; amd. Sec. 5, Ch. 481, L. 1995; amd. Sec. 9, Ch.

528, L. 1995; amd. Sec. 168, Ch. 480, L. 1997; Sec. 41-5-604, MCA 1995; redes. 41-5-216 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 3, Ch. 106, L. 1999; amd. Sec. 83, Ch. 114, L. 2003.

Compiler's Comments

<Y2003

2003 Amendment: Chapter 114 in (4) near end before "45-5-624(7)" inserted "reports referred to in"; and made minor changes in style. Amendment effective October 1, 2003.

Cross-References

Youth matters cited in Justice's Court -- public record, 3-10-518.

41-5-217. Repealed. Sec. 4, Ch. 106, L. 1999.

History: En. Sec. 1, Ch. 466, L. 1995; amd. Sec. 47, Ch. 550, L. 1997; Sec. 41-5-605, MCA 1995; redes. 41-5-217 by Sec. 47, Ch. 286, L. 1997.

Part 3

Custody and Detention

41-5-301. Renumbered 41-5-1201. Sec. 47, Ch. 286, L. 1997.

41-5-302. Renumbered 41-3-1111. Sec. 31, Ch. 465, L. 1983.

41-5-303. Renumbered 41-5-331. Sec. 47, Ch. 286, L. 1997.

41-5-304. Renumbered 41-5-1206. Sec. 47, Ch. 286, L. 1997.

41-5-305. Renumbered 41-5-341. Sec. 47, Ch. 286, L. 1997.

41-5-306. Renumbered 41-5-344. Sec. 47, Ch. 286, L. 1997.

41-5-307. Renumbered 41-5-322. Sec. 47, Ch. 286, L. 1997.

41-5-308. Repealed. Secs. 14, 16, Ch. 547, L. 1991.

History: En. Sec. 2, Ch. 475, L. 1987; amd. Sec. 6, Ch. 434, L. 1989; amd. Sec. 22, Ch. 799, L. 1991.

41-5-309. Renumbered 41-5-323. Sec. 47, Ch. 286, L. 1997.

41-5-310. Repealed. Sec. 46, Ch. 286, L. 1997; Sec. 74, Ch. 550, L. 1997.

History: En. Sec. 1, Ch. 548, L. 1991.

41-5-311. Renumbered 41-5-349. Sec. 47, Ch. 286, L. 1997.

41-5-312. Repealed. Sec. 46, Ch. 286, L. 1997.

History: En. Sec. 4, Ch. 547, L. 1991.

41-5-313. Renumbered 41-5-350. Sec. 47, Ch. 286, L. 1997.

41-5-314. Renumbered 41-5-321. Sec. 47, Ch. 286, L. 1997.

41-5-315. Repealed. Sec. 27, Ch. 799, L. 1991.

History: En. Sec. 12, Ch. 434, L. 1989.

41-5-316. Repealed. Sec. 27, Ch. 799, L. 1991.

History: En. Sec. 13, Ch. 434, L. 1989.

41-5-317 through 41-5-320 reserved.

41-5-321. Taking into custody. (1) A youth may be taken into custody under the following circumstances:

- (a) by a law enforcement officer pursuant to a lawful order or process of any court;
- (b) by a law enforcement officer pursuant to a lawful arrest for violation of the law;
- (c) by a juvenile home arrest officer or an officer listed in subsections (1)(a) and (1)(b) if a youth placed under a home arrest program has violated a condition of the placement and the home arrest officer or law enforcement officer has direct knowledge of the violation or a juvenile probation officer has provided the juvenile home arrest officer notice of a violation.

(2) The taking of a youth into custody is not an arrest except for the purpose of determining the validity of the taking under the constitution of Montana or the United States.

History: En. 10-1211 by Sec. 11, Ch. 329, L. 1974; R.C.M. 1947, 10-1211; MCA 1981, 41-5-302; redes. 41-3-1111 by Sec. 31(4), Ch. 465, L. 1983; Sec. 41-3-1111, MCA 1989; redes. 41-5-314 by Sec. 15, Ch. 547, L. 1991; Sec. 41-5-314, MCA 1995; redes. 41-5-321 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 2, Ch. 326, L. 1999; amd. Sec. 5, Ch. 114, L. 2001.

41-5-322. Release from custody -- detention -- shelter care. (1) Whenever a peace officer believes, on reasonable grounds, that a youth can be released to a

responsible person, the peace officer may release the youth to that person upon receiving a written promise from the person to bring the youth before the probation officer at a time and place specified in the written promise, or a peace officer may release the youth under any other reasonable circumstances.

(2) Whenever the peace officer believes, on reasonable grounds, that the youth must be detained, the peace officer shall notify the probation officer immediately and shall, as soon as practicable, provide the probation officer with a written report of the peace officer's reasons for holding the youth in detention. If it is necessary to hold the youth pending appearance before the youth court, then the youth must be held in a place of detention, as provided in 41-5-348, that is approved by the youth court.

(3) If the peace officer believes that the youth must be sheltered, the peace officer shall notify the probation officer immediately and shall provide a written report of the peace officer's reasons for placing the youth in shelter care. If the youth is then held, the youth must be placed in a shelter care facility approved by the youth court.

History: En. 10-1213 by Sec. 13, Ch. 329, L. 1974; amd. Sec. 1, Ch. 348, L. 1975; amd. Sec. 5, Ch. 571, L. 1977; R.C.M. 1947, 10-1213; amd. Sec. 7, Ch. 547, L. 1991; amd. Sec. 22, Ch. 286, L. 1997; Sec. 41-5-307, MCA 1995; redes. 41-5-322 by Sec. 47, Ch. 286, L. 1997.

41-5-323. Bail. A youth placed in detention or shelter care may be released on bail. The court shall use the provisions of Title 46, chapter 9, as guidance. In determining the amount of bail, the court shall consider the financial ability of the youth and the parents or legal custodian of the youth.

History: En. Sec. 3, Ch. 475, L. 1987; amd. Sec. 8, Ch. 547, L. 1991; Sec. 41-5-309, MCA 1995; redes. 41-5-323 by Sec. 47, Ch. 286, L. 1997.

41-5-324 through 41-5-330 reserved.

41-5-331. Rights of youth taken into custody -- questioning -- waiver of rights. (1) When a youth is taken into custody for questioning upon a matter that could result in a petition alleging that the youth is either a delinquent youth or a youth in need of intervention, the following requirements must be met:

(a) The youth must be advised of the youth's right against self-incrimination and the youth's right to counsel.

(b) The investigating officer, probation officer, or person assigned to give notice shall immediately notify the parents, guardian, or legal custodian of the youth that the youth has been taken into custody, the reasons for taking the youth into custody, and where the youth is being held. If the parents, guardian, or legal custodian cannot be found through diligent efforts, a close relative or friend chosen by the youth must be notified.

(2) A youth may waive the rights listed in subsection (1) under the following situations:

(a) when the youth is 16 years of age or older, the youth may make an effective waiver;

(b) when the youth is under 16 years of age and the youth and the youth's parent or guardian agree, they may make an effective waiver; or

(c) when the youth is under 16 years of age and the youth and the youth's parent or guardian do not agree, the youth may make an effective waiver only with advice of counsel.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(1)(a), (1)(b); amd. Sec. 1, Ch. 385, L. 1979; amd. Sec. 7, Ch. 475, L. 1987; amd. Sec. 5, Ch. 515, L. 1987; (2) thru (6) En. Sec. 1, Ch. 475, L. 1987; amd. Sec. 2, Ch. 271, L. 1989; amd. Sec. 3, Ch. 547, L. 1991; amd. Sec. 11, Ch. 286, L. 1997; amd. Sec. 76, Ch. 550, L. 1997; Sec. 41-5-303, MCA 1995; redes. 41-5-331 by Sec. 47, Ch. 286, L. 1997.

41-5-332. Custody -- hearing for probable cause. (1) When a youth is taken into custody for questioning, a hearing to determine whether there is probable cause to believe the youth is a delinquent youth or a youth in need of intervention must be held within 24 hours, excluding weekends and legal holidays. A hearing is not required if the youth is released prior to the time of the required hearing.

(2) When a youth is taken into custody for a violation of placement under a home arrest program, a hearing to determine whether a violation occurred must be held within 24 hours, excluding weekends and holidays.

(3) The probable cause hearing required under subsection (1) may be held in person or by videoconference by the youth court, a justice of the peace, a municipal or city judge, or a magistrate having jurisdiction in the case as provided in 41-5-203. If the probable cause hearing is held by a justice of the peace, a municipal or city judge, or a magistrate, a record of the hearing must be made by a court reporter or by a tape recording of the hearing or by an audio-video tape if the hearing is held by videoconference.

(4) A probable cause hearing may be conducted by telephone if other means of conducting the hearing are impractical. All written orders and findings of the court in a hearing conducted by telephone must bear the name of the judge or magistrate presiding in the case and the hour and date the order or findings were issued.

(5) A hearing is not required for a youth placed in detention for an alleged parole violation.

History: En. Sec. 12, Ch. 286, L. 1997; amd. Sec. 76, Ch. 550, L. 1997; amd. Sec. 3, Ch. 326, L. 1999; amd. Sec. 4, Ch. 532, L. 1999; amd. Sec. 1, Ch. 159, L. 2001.

41-5-333. Custody -- hearing for probable cause -- procedure. (1) At a probable cause hearing held pursuant to 41-5-332, the youth must be informed of the youth's constitutional rights and the youth's rights under this chapter.

(2) A parent, guardian, or custodian of the youth may be held in contempt of court for failing to be present at or to participate in the probable cause hearing unless the parent, guardian, or custodian:

(a) cannot be located through diligent efforts of the investigating peace officer or peace officers; or

(b) is excused by the court for good cause.

(3) At the probable cause hearing, a guardian ad litem may be appointed as provided in 41-5-1411.

History: En. Sec. 13, Ch. 286, L. 1997.

41-5-334. Custody -- hearing for probable cause -- determinations -- detention -- release. (1) If, at a probable cause hearing held pursuant to 41-5-332, it is determined that there is probable cause to believe that the youth is a delinquent youth or a youth in need of intervention, the court having jurisdiction in the case shall determine whether the youth should be retained in custody. If the court determines that continued custody of the youth is necessary and if the youth meets the criteria in 41-5-341 through 41-5-343, the youth may be placed in a detention facility, a youth assessment center, or a shelter care facility as provided in 41-5-345 through 41-5-348 but may not be placed in a jail or other facility used for the confinement of adults accused or convicted of criminal offenses.

(2) If probable cause is not found or if a probable cause hearing is not held within the time specified in 41-5-332, the youth must be immediately released from custody.

History: En. Secs. 14, 49(3)(f), Ch. 286, L. 1997.

41-5-335 through 41-5-340 reserved.

41-5-341. Criteria for placement of youth in secure detention facilities. A youth may be placed in a secure detention facility only if the youth:

(1) has allegedly committed an act that if committed by an adult would constitute a criminal offense and the alleged offense is one specified in 41-5-206;

(2) is alleged to be a delinquent youth and:

(a) has escaped from a correctional facility or secure detention facility;

(b) has violated a valid court order or a parole agreement;

(c) the youth's detention is required to protect persons or property;

(d) the youth has pending court or administrative action or is awaiting a transfer to another jurisdiction and may abscond or be removed from the jurisdiction of the court;

(e) there are not adequate assurances that the youth will appear for court when required; or

(f) the youth meets additional criteria for secure detention established by the youth court in the judicial district that has current jurisdiction over the youth; or

(3) has been adjudicated delinquent and is awaiting final disposition of the youth's case.

History: En. 10-1212 by Sec. 12, Ch. 329, L. 1974; amd. Sec. 4, Ch. 571, L. 1977; R.C.M. 1947, 10-1212; amd. Sec. 1, Ch. 689, L. 1985; amd. Sec. 8, Ch. 475, L. 1987; amd. Sec. 7, Ch. 515, L. 1987; amd. Sec. 1, Ch. 610, L. 1987; amd. Sec. 3, Ch. 548, L. 1991; amd. Secs. 15, 49(3)(i), Ch. 286, L. 1997; Sec. 41-5-305, MCA 1995; redes. 41-5-341 by Sec. 47, Ch. 286, L. 1997.

41-5-342. Criteria for placement of youth in shelter care facilities. A youth may be placed in a shelter care facility only if:

- (1) the youth and the youth's family need shelter care to address their problematic situation and it is not possible for the youth to remain at home;
- (2) the youth needs to be protected from physical or emotional harm;
- (3) the youth needs to be deterred or prevented from immediate repetition of troubling behavior;
- (4) shelter care is necessary to assess the youth and the youth's environment;
- (5) shelter care is necessary to provide adequate time for case planning and disposition; or
- (6) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family.

History: En. Sec. 16, Ch. 286, L. 1997.

41-5-343. Criteria for placement of youth in youth assessment centers. A youth may be placed in a youth assessment center only if:

- (1) the youth meets the requirements for placement in shelter care;
- (2) the youth has not committed an act that would be a felony offense if committed by an adult;
- (3) the youth needs an alternative, staff-secured site for evaluation and assessment of the youth's need for services;
- (4) the youth needs to be held accountable for the youth's actions with structured programming; and
- (5) the youth meets qualifications as outlined by the placement guidelines that are determined by the department and coordinated with the guidelines used by the youth placement committees.

History: En. Sec. 49(3)(h), Ch. 286, L. 1997.

41-5-344. Repealed. Sec. 8, Ch. 114, L. 2001.

History: En. 10-1214 by Sec. 14, Ch. 329, L. 1974; amd. Sec. 6, Ch. 571, L. 1977; R.C.M. 1947, 10-1214; amd. Sec. 3, Ch. 465, L. 1983; amd. Sec. 2, Ch. 737, L. 1985; amd. Sec. 1, Ch. 11, Sp. L. June 1986; amd. Sec. 9, Ch. 475, L. 1987; amd. Sec. 5, Ch. 434, L. 1989; amd. Sec. 7, Ch. 105, L. 1991; amd. Sec. 5, Ch. 547, L. 1991; amd. Secs. 4, 5, Ch. 548, L. 1991; amd. Secs. 20, 21, Ch. 799, L. 1991; amd. Sec. 62, Ch.

10, L. 1993; amd. Sec. 5, Ch. 528, L. 1995; amd. Secs. 17, 49(3)(f), Ch. 286, L. 1997; Sec. 41-5-306, MCA 1995; redes. 41-5-344 by Sec. 47, Ch. 286, L. 1997.

41-5-345. Limitation on placement of youth in need of intervention. (1) After a probable cause hearing provided for in 41-5-332, a youth alleged to be a youth in need of intervention may be placed only in shelter care, as provided in 41-5-347.

(2) A youth alleged or found to be a youth in need of intervention may not be placed in a jail, secure detention facility, or correctional facility.

History: En. Sec. 18, Ch. 286, L. 1997; amd. Sec. 76, Ch. 550, L. 1997.

41-5-346. Limitation on placement of delinquent youth. After a probable cause hearing provided for in 41-5-332, a youth alleged to be a delinquent youth may be placed only:

- (1) in shelter care, in the facilities described in 41-5-347;
- (2) under home arrest as provided in 41-5-347;
- (3) in detention, as provided in 41-5-348; or
- (4) in a community youth court program.

History: En. Sec. 19, Ch. 286, L. 1997.

41-5-347. Place of shelter care. Placement in shelter care means placement in one of the following:

- (1) in a licensed youth care facility as defined in 52-2-602; or
- (2) under home arrest, with or without a monitoring device, as provided in Title 46, chapter 18, part 10, either in the youth's own home or in a facility described in subsection (1).

History: En. Secs. 20, 49(3)(f), Ch. 286, L. 1997; amd. Sec. 76, Ch. 51, L. 1999.

41-5-348. Place of detention. Placement in detention means placement in one of the following facilities:

- (1) a short-term detention center;
- (2) a youth detention facility, including a regional detention facility; or
- (3) a secure detention facility outside the state or operated by an Indian tribe that is under contract to the state or a subdivision of the state and that is in substantial compliance with the licensing requirements contained in rules adopted by the department.

History: En. Sec. 21, Ch. 286, L. 1997; amd. Sec. 5, Ch. 532, L. 1999.

41-5-349. Youth not to be detained in jail -- exceptions -- time limitations. (1) A youth may not be detained or otherwise placed in a jail or other adult detention facility except as provided in 41-5-206 and this section.

(2) A youth who has allegedly committed an offense that if committed by an adult would constitute a criminal offense may be temporarily detained in a jail or other adult detention facility for a period not to exceed:

(a) 6 hours, but in no case overnight, for the purpose of identification, processing, or transfer of the youth to an appropriate detention facility or shelter care facility; or

(b) 24 hours, excluding weekends and legal holidays, if the youth is awaiting a probable cause hearing pursuant to 41-5-332.

(3) The exception provided for in subsection (2)(b) applies only if:

(a) the court having jurisdiction over the youth is outside a metropolitan statistical area;

(b) alternative facilities are not available or alternative facilities do not provide adequate security; and

(c) the youth is kept in an area that provides physical as well as sight and sound separation from adults accused or convicted of criminal offenses.

(4) Whenever, despite all good faith efforts to comply with the time limitations specified in subsection (2), the limitations are exceeded, this circumstance does not serve as grounds for dismissal of the case nor does this circumstance constitute a defense in a subsequent delinquency or criminal proceeding.

History: En. Sec. 1, Ch. 547, L. 1991; amd. Sec. 49, Ch. 18, L. 1995; amd. Sec. 23, Ch. 286, L. 1997; Sec. 41-5-311, MCA 1995; redes. 41-5-349 by Sec. 47, Ch. 286, L. 1997.

41-5-350. Permitted acts -- detention of youth in law enforcement facilities - - criteria. (1) Nothing in this chapter precludes the detention of youth in a police station or other law enforcement facility that is attached to or part of a jail if:

(a) the area where the youth is held is an unlocked, multipurpose area, such as a lobby, office, interrogation room, or other area that is not designated or used as a secure detention area or that is not part of a secure detention area, or, if part of such an area, that is used only for the purpose of processing, such as a booking room;

(b) the youth is not secured to a cuffing rail or other stationary object during the period of detention;

(c) use of the area is limited to ensuring custody of the youth for the purpose of identification, processing, or transfer of the youth to an appropriate detention or shelter care facility;

(d) the area is not designed or intended to be used for residential purposes; and

(e) the youth is under continuous visual supervision by a law enforcement officer or by facility staff during the period of time that the youth is held in detention.

(2) For purposes of this section, "secure detention" means the detention of youth or confinement of adults accused or convicted of criminal offenses in a physically restricting setting, including but not limited to a locked room or set of rooms or a cell designed to prevent a youth or adult from departing at will.

History: En. Sec. 7, Ch. 548, L. 1991; Sec. 41-5-313, MCA 1995; redes. 41-5-350 by Sec. 47, Ch. 286, L. 1997.

41-5-351 through 41-5-354 reserved.

41-5-355. Excessive juvenile population -- confinement of juveniles in alternate placements. (1) The department shall determine the capacity for state youth correctional facilities. The department shall notify all district courts, sheriffs, and youth courts of the capacity for each state youth correctional facility by sending a report to each annually.

(2) If the population of a state youth correctional facility exceeds the capacity established by the department, the director of the department may declare that the capacity has been exceeded and temporarily stop admissions to the facility. The director shall notify each district court, sheriff, and youth court that delinquent or criminally convicted youth will not be accepted by the department for admission into the facility until the population is reduced to less than the capacity determined by the department in subsection (1).

(3) If the director of the department declares that the capacity has been exceeded, the department shall place delinquent youth committed to a state youth correctional facility or criminally convicted youth in alternate placements based on the needs of the delinquent youth or criminally convicted youth. If a youth is denied placement in a state youth correctional facility under this section, the department shall inform and seek approval of the district court of the intended alternative placement prior to placing the youth.

(4) The department may enter into contracts with the federal government, other states, local governments, public or private corporations, and other entities that have suitable facilities for confining delinquent youth or criminally convicted youth committed to the department, either because a state youth correctional facility has exceeded its capacity or because the department has no youth correctional facility that is adequate for certain delinquent youth or criminally convicted youth.

History: En. Sec. 16, Ch. 532, L. 1999.

Cross-References

Commitment expenses -- transportation costs -- arrangement for transportation, 52-5-109.

Hearing on alleged violation of parole agreement -- detention pending decision, 52-5-129.

Part 4

Informal Proceeding (Renumbered)

41-5-401. Renumbered 41-5-1302. Sec. 47, Ch. 286, L. 1997.

41-5-402. Renumbered 41-5-1303. Sec. 47, Ch. 286, L. 1997.

41-5-403. Renumbered 41-5-1304. Sec. 47, Ch. 286, L. 1997.

Part 5

Proceeding on Petition (Renumbered and Repealed)

41-5-501. Renumbered 41-5-1402. Sec. 47, Ch. 286, L. 1997.

41-5-502. Renumbered 41-5-1403. Sec. 47, Ch. 286, L. 1997.

41-5-503. Renumbered 41-5-1404. Sec. 47, Ch. 286, L. 1997.

41-5-504 through 41-5-510 reserved.

41-5-511. Renumbered 41-5-1413. Sec. 47, Ch. 286, L. 1997.

41-5-512. Renumbered 41-5-1411. Sec. 47, Ch. 286, L. 1997.

41-5-513. Renumbered 41-5-1414. Sec. 47, Ch. 286, L. 1997.

41-5-514. Renumbered 41-5-1415. Sec. 47, Ch. 286, L. 1997.

41-5-515. Renumbered 41-5-1412. Sec. 47, Ch. 286, L. 1997.

41-5-516. Repealed. Sec. 16, Ch. 515, L. 1987.

History: En. 10-1219 by Sec. 19, Ch. 329, L. 1974; R.C.M. 1947, 10-1219; amd. Sec. 1, Ch. 215, L. 1979; amd. Sec. 1, Ch. 158, L. 1983.

41-5-517 through 41-5-520 reserved.

41-5-521. Renumbered 41-5-1502. Sec. 47, Ch. 286, L. 1997.

41-5-522. Renumbered 41-5-1511. Sec. 47, Ch. 286, L. 1997.

41-5-523. Renumbered 41-5-1512. Sec. 47, Ch. 286, L. 1997.

41-5-524. Renumbered 41-5-1501. Sec. 47, Ch. 286, L. 1997.

41-5-525. Renumbered 41-5-121. Sec. 47, Ch. 286, L. 1997.

41-5-526. Renumbered 41-5-122. Sec. 47, Ch. 286, L. 1997.

41-5-527. Renumbered 41-5-123. Sec. 47, Ch. 286, L. 1997.

41-5-528. Renumbered 41-5-124. Sec. 47, Ch. 286, L. 1997.

41-5-529. Renumbered 41-5-125. Sec. 47, Ch. 286, L. 1997.

41-5-530. Renumbered 41-5-112. Sec. 47, Ch. 286, L. 1997.

41-5-531. Renumbered 41-5-1421. Sec. 47, Ch. 286, L. 1997.

41-5-532. Renumbered 41-5-1423. Sec. 47, Ch. 286, L. 1997.

41-5-533. Renumbered 41-5-1431. Sec. 47, Ch. 286, L. 1997.

Part 6

Confidentiality of Proceedings -- Records (Renumbered and Repealed)

41-5-601. Repealed. Sec. 8, Ch. 466, L. 1995.

History: En. 10-1241 by Sec. 41, Ch. 329, L. 1974; R.C.M. 1947, 10-1241; amd. Sec. 2, Ch. 469, L. 1981; amd. Sec. 10, Ch. 15, L. 1985; amd. Sec. 1, Ch. 462, L. 1987; amd. Sec. 12, Ch. 515, L. 1987.

41-5-602. Repealed. Sec. 8, Ch. 466, L. 1995.

History: En. 10-1230 by Sec. 30, Ch. 329, L. 1974; amd. Sec. 10, Ch. 100, L. 1977; R.C.M. 1947, 10-1230; amd. Sec. 3, Ch. 469, L. 1981; amd. Sec. 63, Ch. 609, L. 1987; amd. Sec. 3, Ch. 510, L. 1991; amd. Sec. 6, Ch. 655, L. 1991.

41-5-603. Renumbered 41-5-215. Sec. 47, Ch. 286, L. 1997.

41-5-604. Renumbered 41-5-216. Sec. 47, Ch. 286, L. 1997.

41-5-605. Renumbered 41-5-217. Sec. 47, Ch. 286, L. 1997.

Part 7

Probation Officers (Renumbered)

- 41-5-701. Renumbered 41-5-1701.** Sec. 47, Ch. 286, L. 1997.
- 41-5-702. Renumbered 41-5-1702.** Sec. 47, Ch. 286, L. 1997.
- 41-5-703. Renumbered 41-5-1703.** Sec. 47, Ch. 286, L. 1997.
- 41-5-704. Renumbered 41-5-1704.** Sec. 47, Ch. 286, L. 1997.
- 41-5-705. Renumbered 41-5-1705.** Sec. 47, Ch. 286, L. 1997.
- 41-5-706. Renumbered 41-5-1706.** Sec. 47, Ch. 286, L. 1997.

Part 8

Custodial Care (Renumbered and Repealed)

- 41-5-801. Renumbered 41-3-1121.** Sec. 31, Ch. 465, L. 1983.
- 41-5-802. Renumbered 41-5-1801.** Sec. 47, Ch. 286, L. 1997.
- 41-5-803. Repealed.** Sec. 32, Ch. 465, L. 1983.

History: En. Sec. 14, Ch. 227, L. 1943; amd. Sec. 7, Ch. 276, L. 1947; Sec. 10-615, R.C.M. 1947; amd. and redes. 10-1238 by Sec. 38, Ch. 329, L. 1974; amd. Sec. 8, Ch. 450, L. 1977; R.C.M. 1947, 10-1238; amd. Sec. 10, Ch. 567, L. 1979.

- 41-5-804. Renumbered 41-3-1105.** Sec. 31, Ch. 465, L. 1983.
- 41-5-805. Combined with 41-3-405, renumbered 41-3-1123.** Sec. 31, Ch. 465, L. 1983.
- 41-5-806. Combined with 41-3-407, renumbered 41-3-1124.** Sec. 31, Ch. 465, L. 1983.
- 41-5-807. Renumbered 41-3-1115.** Sec. 31, Ch. 465, L. 1983.
- 41-5-808. Repealed.** Sec. 27, Ch. 799, L. 1991.

History: En. Sec. 4, Ch. 475, L. 1987; amd. Sec. 58, Ch. 83, L. 1989; amd. Sec. 9, Ch. 434, L. 1989.

41-5-809. Renumbered 41-5-1802. Sec. 47, Ch. 286, L. 1997.

41-5-810. Renumbered 41-5-1803. Sec. 47, Ch. 286, L. 1997.

41-5-811. Renumbered 41-5-1804. Sec. 47, Ch. 286, L. 1997.

41-5-812. Renumbered 41-5-1805. Sec. 47, Ch. 286, L. 1997.

41-5-813. Renumbered 41-5-1806. Sec. 47, Ch. 286, L. 1997.

41-5-814. Renumbered 41-5-1807. Sec. 47, Ch. 286, L. 1997.

Part 9

District Youth Guidance Homes (Repealed)

41-5-901. Repealed. Sec. 32, Ch. 465, L. 1983.

History: En. Sec. 1, Ch. 427, L. 1971; Sec. 10-1101, R.C.M. 1947; amd. and redes. 10-1242 by Sec. 42, Ch. 329, L. 1974; amd. Sec. 12, Ch. 100, L. 1977; amd. Sec. 14, Ch. 571, L. 1977; R.C.M. 1947, 10-1242.

41-5-902. Repealed. Sec. 32, Ch. 465, L. 1983.

History: En. Sec. 10, Ch. 427, L. 1971; Sec. 10-1110, R.C.M. 1947; redes. 10-1251 by Sec. 51, Ch. 329, L. 1974; amd. Sec. 16, Ch. 100, L. 1977; R.C.M. 1947, 10-1251.

41-5-903. Repealed. Sec. 32, Ch. 465, L. 1983.

History: En. Sec. 3, Ch. 427, L. 1971; Sec. 10-1103, R.C.M. 1947; redes. 10-1244 by Sec. 44, Ch. 329, L. 1974; R.C.M. 1947, 10-1244.

41-5-904 through 41-5-910 reserved.

41-5-911. Repealed. Sec. 32, Ch. 465, L. 1983.

History: En. Sec. 8, Ch. 427, L. 1971; Sec. 10-1108, R.C.M. 1947; amd. and redes. 10-1249 by Sec. 49, Ch. 329, L. 1974; amd. Sec. 15, Ch. 100, L. 1977; amd. Sec. 9, Ch. 450, L. 1977; R.C.M. 1947, 10-1249.

41-5-912. Repealed. Sec. 32, Ch. 465, L. 1983.

History: En. Sec. 4, Ch. 427, L. 1971; Sec. 10-1104, R.C.M. 1947; amd. and redes. 10-1245 by Sec. 45, Ch. 329, L. 1974; R.C.M. 1947, 10-1245.

41-5-913. Repealed. Sec. 32, Ch. 465, L. 1983.

History: En. Sec. 11, Ch. 427, L. 1971; Sec. 10-1111, R.C.M. 1947; redes. 10-1252 by Sec. 52, Ch. 329, L. 1974; amd. Sec. 17, Ch. 100, L. 1977; R.C.M. 1947, 10-1252.

41-5-914 through 41-5-920 reserved.

41-5-921. Repealed. Sec. 32, Ch. 465, L. 1983.

History: En. Sec. 6, Ch. 427, L. 1971; Sec. 10-1106, R.C.M. 1947; amd. and redes. 10-1247 by Sec. 47, Ch. 329, L. 1974; R.C.M. 1947, 10-1247; amd. Sec. 1, Ch. 141, L. 1981.

41-5-922. Repealed. Sec. 32, Ch. 465, L. 1983.

History: En. Sec. 9, Ch. 427, L. 1971; Sec. 10-1109, R.C.M. 1947; amd. and redes. 10-1250 by Sec. 50, Ch. 329, L. 1974; R.C.M. 1947, 10-1250.

41-5-923. Repealed. Sec. 32, Ch. 465, L. 1983.

History: En. Sec. 5, Ch. 427, L. 1971; Sec. 10-1105, R.C.M. 1947; amd. and redes. 10-1246 by Sec. 46, Ch. 329, L. 1974; amd. Sec. 13, Ch. 100, L. 1977; R.C.M. 1947, 10-1246.

41-5-924. Repealed. Sec. 32, Ch. 465, L. 1983.

History: En. Sec. 7, Ch. 427, L. 1971; Sec. 10-1107, R.C.M. 1947; amd. and redes. 10-1248 by Sec. 48, Ch. 329, L. 1974; amd. Sec. 14, Ch. 100, L. 1977; R.C.M. 1947, 10-1248.

Part 10

State Grants for Youth Detention Services (Renumbered)

41-5-1001. Renumbered 41-5-1901. Sec. 47, Ch. 286, L. 1997.

41-5-1002. Renumbered 41-5-1902. Sec. 47, Ch. 286, L. 1997.

41-5-1003. Renumbered 41-5-1903. Sec. 47, Ch. 286, L. 1997.

41-5-1004. Renumbered 41-5-1904. Sec. 47, Ch. 286, L. 1997.

41-5-1005. Renumbered 41-5-1905. Sec. 47, Ch. 286, L. 1997.

41-5-1006. Renumbered 41-5-1906. Sec. 47, Ch. 286, L. 1997.

41-5-1007. Renumbered 41-5-1907. Sec. 47, Ch. 286, L. 1997.

41-5-1008. Renumbered 41-5-1908. Sec. 47, Ch. 286, L. 1997.

Part 11

Extended Jurisdiction Prosecution Act (Renumbered)

41-5-1101. Renumbered 41-5-1601. Sec. 47, Ch. 286, L. 1997.

41-5-1102. Renumbered 41-5-1602. Sec. 47, Ch. 286, L. 1997.

41-5-1103. Renumbered 41-5-1603. Sec. 47, Ch. 286, L. 1997.

41-5-1104. Renumbered 41-5-1604. Sec. 47, Ch. 286, L. 1997.

41-5-1105. Renumbered 41-5-1605. Sec. 47, Ch. 286, L. 1997.

Part 12

Preliminary Investigation

41-5-1201. Preliminary inquiry -- referral of youth in need of care. (1)

Whenever the court receives information from an agency or person, including a parent or guardian of a youth, based upon reasonable grounds, that a youth is or appears to be a delinquent youth or a youth in need of intervention or that the youth is subject to a court order or consent order and has violated the terms of an order, a probation officer or an assessment officer shall make a preliminary inquiry into the matter.

(2) If the probation officer or assessment officer determines that the facts indicate that the youth is a youth in need of care, as defined in 41-3-102, the matter must be immediately referred to the department of public health and human services.

History: En. 10-1209 by Sec. 9, Ch. 329, L. 1974; amd. Sec. 2, Ch. 571, L. 1977; R.C.M. 1947, 10-1209; amd. Sec. 4, Ch. 515, L. 1987; amd. Sec. 58, Ch. 609, L. 1987; amd. Sec. 1, Ch. 271, L. 1989; amd. Sec. 193, Ch. 546, L. 1995; amd. Sec. 1, Ch. 185, L. 1997; amd. Secs. 5, 49(3)(f), Ch. 286, L. 1997; Sec. 41-5-301, MCA 1995; redes. 41-5-1201 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 6, Ch. 114, L. 2001.

41-5-1202. Preliminary inquiry -- procedure -- youth assessment. (1) In conducting a preliminary inquiry under 41-5-1201, the probation officer or assessment officer shall:

(a) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana and the United States;

(b) determine whether the matter is within the jurisdiction of the court;

(c) determine, if the youth is in detention, a youth assessment center, or shelter care, whether detention, placement in a youth assessment center, or shelter care should be continued or modified based upon criteria set forth in 41-5-341 through 41-5-343.

(2) In conducting a preliminary inquiry, the probation officer or assessment officer may:

(a) require the presence of any person relevant to the inquiry;

(b) request subpoenas from the judge to accomplish this purpose;

(c) require investigation of the matter by any law enforcement agency or any other appropriate state or local agency;

(d) perform a youth assessment pursuant to 41-5-1203.

History: En. Secs. 6, 49(3)(f), Ch. 286, L. 1997; amd. Sec. 78(5)(a), Ch. 550, L. 1997.

41-5-1203. Preliminary inquiry -- youth assessment. (1) The probation officer or assessment officer may perform a youth assessment if:

(a) a youth has been referred to the youth court as an alleged youth in need of intervention with a minimum of two misdemeanor offenses or three offenses in the past year that would not be offenses if the youth were an adult;

(b) the youth is alleged to be a youth in need of intervention or a delinquent youth and the youth or the youth's parents or guardian requests the youth assessment and both the youth and the parents or guardian are willing to cooperate with the assessment process; or

(c) the circumstances surrounding a youth who has committed an act that would be a felony if committed by an adult indicate the need for a youth assessment and the safety of the community has been considered in determining where the youth assessment is conducted.

(2) A youth assessment:

(a) must be a multidisciplinary effort that may include, but is not limited to a chemical dependency evaluation of the youth, an educational assessment of the youth, an evaluation to determine if the youth has mental health needs, or an assessment of the need for any family-based services or other services provided by the department of public health and human services or other state and local agencies. The education component of the youth assessment is intended to address attendance, behavior, and performance issues of the youth. The education component is not intended to interfere with the right to attend a nonpublic or home school that complies with 20-5-109.

(b) must include a summary of the family's strengths and needs as they relate to addressing the youth's behavior;

(c) may occur in a youth's home, with or without electronic monitoring, or pursuant to 41-5-343 in a youth assessment center licensed by the department of public health and human services or in any other entity licensed by the department of public health and human services. The county shall provide adequate security in other licensed entities through provision of additional staff or electronic monitoring. The staff provided by the county must meet licensing requirements applicable to the licensed entity in which the youth is being held.

(3) The assessment officer arranging the youth assessment shall work with the parent or guardian of the youth to coordinate the performance of the various parts of the assessment with any providers that may already be working with the family or providers that are chosen by the family to the extent possible to meet the goals of the Youth Court Act.

History: En. Sec. 49(3)(g), Ch. 286, L. 1997; amd. Sec. 78(5)(c), Ch. 550, L. 1997.

41-5-1204. Preliminary inquiry -- determinations -- release. Once relevant information is secured after a preliminary inquiry under 41-5-1201, the probation officer or assessment officer shall:

(1) determine whether the interest of the public or the youth requires that further action be taken;

(2) terminate the inquiry upon the determination that no further action be taken; and

(3) release the youth immediately upon the determination that the filing of a petition is not authorized.

History: En. Secs. 7, 49(3)(f), Ch. 286, L. 1997.

41-5-1205. Preliminary inquiry -- dispositions available to probation officer. Upon determining that further action is required after a preliminary inquiry under 41-5-1201, the probation officer or assessment officer may:

(1) arrange informal disposition as provided in 41-5-1301; or

(2) refer the matter to the county attorney for filing a petition in youth court charging the youth to be a delinquent youth or a youth in need of intervention or for filing an information in the district court as provided in 41-5-206.

History: En. Secs. 8, 49(3)(f), Ch. 286, L. 1997.

41-5-1206. Investigation, fingerprints, and photographs. (1) All law enforcement investigations relating to a delinquent youth or youth in need of intervention must be conducted in accordance with this chapter and Title 46.

(2) A youth may be fingerprinted or photographed for criminal identification purposes:

- (a) if arrested for conduct alleged to be unlawful that would be a felony if committed by an adult;
 - (b) pursuant to a search warrant, supported by probable cause, issued by a judge, justice of the peace, or magistrate; or
 - (c) upon the order of the youth court judge, after a petition alleging delinquency has been filed.
- (3) Fingerprint records and photographs may be used by the department of justice or any law enforcement agency in the judicial district for comparison and identification purposes in any other investigation.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(2); amd. Sec. 2, Ch. 484, L. 1981; amd. Sec. 6, Ch. 515, L. 1987; amd. Sec. 1, Ch. 346, L. 1991; amd. Sec. 1, Ch. 603, L. 1993; amd. Sec. 4, Ch. 528, L. 1995; amd. Sec. 22, Ch. 550, L. 1997; Sec. 41-5-304, MCA 1995; redes. 41-5-1206 by Sec. 47, Ch. 286, L. 1997.

41-5-1207 through 41-5-1209 reserved.

41-5-1210. Information to be collected by juvenile probation officer or assessment officer. The juvenile probation officer or assessment officer shall collect the following information regarding a youth:

- (1) biographical data;
- (2) a description of prior and current offenses, including criminal history;
- (3) a listing of known or suspected associates;
- (4) any gang or drug involvement;
- (5) field investigation data;
- (6) motor vehicle ownership and offense data, if any;
- (7) whether the youth is a suspect in other criminal investigations;
- (8) history of any victimization of others by the youth;
- (9) the youth's status offense history;
- (10) existence of active warrants;
- (11) school, employment, and family histories;
- (12) social and medical services histories; and
- (13) prior conduct in a youth detention or correctional facility, if any.

History: En. Sec. 6, Ch. 532, L. 1999.

Part 13

Informal Proceeding

41-5-1301. Informal disposition. After a preliminary inquiry under 41-5-1201, the probation officer or assessment officer upon determining that further action is required and that referral to the county attorney is not required may:

(1) provide counseling, refer the youth and the youth's family to another agency providing appropriate services, or take any other action or make any informal adjustment that does not involve probation or detention; or

(2) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-1302 through 41-5-1304 if the treatment or adjustment is voluntarily accepted by the youth's parents or guardian and the youth, if the matter is referred immediately to the county attorney for review, and if the probation officer or assessment officer proceeds no further unless authorized by the county attorney.

History: En. Sec. 9, Ch. 286, L. 1997, and Sec. 78(5)(b), Ch. 550, L. 1997; amd. Sec. 7, Ch. 532, L. 1999.

41-5-1302. Consent adjustment without petition. (1) Before referring the matter to the county attorney and subject to the limitations in subsection (3), the probation officer or assessment officer may enter into a consent adjustment and give counsel and advice to the youth, the youth's family, and other interested parties if it appears that:

(a) the admitted facts bring the case within the jurisdiction of the court;

(b) counsel and advice without filing a petition would be in the best interests of the child, the family, and the public; and

(c) the youth may be a youth in need of intervention and the probation officer or assessment officer believes that the parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve, or control the youth's behavior and the youth continues to exhibit behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

(2) Any probation or other disposition imposed under this section against a youth must conform to the following procedures:

(a) Every consent adjustment must be reduced to writing and signed by the youth and the youth's parents or the person having legal custody of the youth.

(b) If the probation officer or assessment officer believes that the youth is a youth in need of intervention, the probation officer or assessment officer shall determine that the parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve, or control the youth's behavior and that the youth continues to exhibit behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

(c) Approval by the youth court judge is required if the complaint alleges commission of a felony or if the youth has been or will be in any way detained.

(3) A consent adjustment without petition under this section may not be used to dispose of a youth's alleged second or subsequent offense if:

- (a) the youth has admitted commission of or has been adjudicated or sentenced for a prior offense that would be a felony if committed by an adult;
 - (b) the second or subsequent offense would be a felony if committed by an adult and was committed within 3 years of a prior offense; or
 - (c) the second or subsequent offense would be a misdemeanor if committed by an adult and was committed within 3 years of a prior offense, other than a felony, unless the probation officer notifies the youth court and obtains written approval from the county attorney and the youth court judge.
- (4) For purposes of subsection (3), related offenses committed by a youth during the same 24-hour period must be considered a single offense.

History: En. 10-1210 by Sec. 10, Ch. 329, L. 1974; amd. Sec. 4, Ch. 100, L. 1977; amd. Sec. 3, Ch. 571, L. 1977; R.C.M. 1947, 10-1210(1), (2); amd. Sec. 2, Ch. 231, L. 1991; amd. Sec. 25, Ch. 550, L. 1997; Sec. 41-5-401, MCA 1995; redes. 41-5-1302 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 8, Ch. 532, L. 1999.

41-5-1303. Communications privileged. An incriminating statement relating to any act or omission constituting delinquency or need of intervention made by the participant to the person giving counsel or advice in the discussions or conferences incident thereto may not be used against the declarant in any proceeding under this chapter, nor may the incriminating statement be admissible in any criminal proceeding against the declarant. This section does not apply to the use of voluntary and reliable statements that are offered for impeachment purposes.

History: En. 10-1210 by Sec. 10, Ch. 329, L. 1974; amd. Sec. 4, Ch. 100, L. 1977; amd. Sec. 3, Ch. 571, L. 1977; R.C.M. 1947, 10-1210(3); amd. Sec. 8, Ch. 515, L. 1987; amd. Sec. 76, Ch. 550, L. 1997; Sec. 41-5-402, MCA 1995; redes. 41-5-1303 by Sec. 47, Ch. 286, L. 1997.

- 41-5-1304. Disposition permitted under consent adjustment.** (1) The following dispositions may be imposed by consent adjustment:
- (a) probation;
 - (b) placement of the youth in substitute care in a youth care facility, as defined in 52-2-602 and pursuant to a recommendation made under 41-5-121;
 - (c) placement of the youth with a private agency responsible for the care and rehabilitation of the youth pursuant to a recommendation made under 41-5-121;
 - (d) restitution, as provided in 41-5-1521, upon approval of the youth court judge;
 - (e) placement of the youth under home arrest as provided in Title 46, chapter 18, part 10;
 - (f) confiscation of the youth's driver's license, if the youth has one, by the probation officer for a specified period of time, not to exceed 90 days. The probation officer shall notify the department of justice of the confiscation and its duration. The department of justice may not enter the confiscation on the youth's driving record. The probation officer shall notify the department of justice when the confiscated driver's license has been returned to the youth. A youth's driver's license may be confiscated

under this subsection more than once. The probation officer may, in the probation officer's discretion and with the concurrence of a parent or guardian, return a youth's confiscated driver's license before the termination of the time period for which it had been confiscated. The confiscation may not be used by an insurer as a factor in determining the premium or part of a premium to be paid for motor vehicle insurance covering the youth or a vehicle or vehicles driven by the youth, nor may it be used as grounds for denying coverage for an accident or other occurrence under an existing policy;

- (g) a requirement that the youth receive counseling services;
- (h) placement in a youth assessment center for up to 10 days;
- (i) placement of the youth in detention for up to 3 days on a space-available basis at the county's expense, which is not reimbursable under part 19 of this chapter;
- (j) a requirement that the youth perform community service;
- (k) a requirement that the youth participate in victim-offender mediation;
- (l) an agreement that the youth pay a contribution covering all or a part of the costs for the adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision, care, custody, and treatment of the youth, including the costs of counseling;

- (m) an agreement that the youth pay a contribution covering all or a part of the costs of a victim's counseling or restitution for damages that result from the offense for which the youth is disposed;

- (n) any other condition ordered by the court to accomplish the goals of the consent adjustment, including but not limited to mediation or youth assessment. Before ordering youth assessment, the court shall provide the family an estimate of the cost of youth assessment, and the court shall take into consideration the financial resources of the family before ordering parental or guardian contribution for the costs of youth assessment.

(2) If the youth violates a parole agreement as provided for in 52-5-126, the youth must be returned to the court for further disposition. A youth may not be placed in a state youth correctional facility under consent adjustment.

(3) If the youth is placed in substitute care, an assessment placement, or detention requiring payment by any state department or local government agency, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the adjudication, disposition, supervision, care, placement, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

History: En. 10-1210 by Sec. 10, Ch. 329, L. 1974; amd. Sec. 4, Ch. 100, L. 1977; amd. Sec. 3, Ch. 571, L. 1977; R.C.M. 1947, 10-1210(4); amd. Sec. 3, Ch. 246, L. 1979; amd. Sec. 3, Ch. 484, L. 1981; amd. Sec. 1, Ch. 129, L. 1983; amd. Sec. 7, Ch. 363, L. 1983; amd. Sec. 4, Ch. 465, L. 1983; amd. Sec. 5, Ch. 531, L. 1985; amd. Sec. 7, Ch. 14, Sp. L. June 1986; amd. Sec. 59, Ch. 609, L. 1987; amd. Sec. 8, Ch. 105, L. 1991; amd. Sec.

3, Ch. 696, L. 1991; amd. Sec. 6, Ch. 528, L. 1995; amd. Sec. 194, Ch. 546, L. 1995; amd. Sec. 2, Ch. 185, L. 1997; amd. Sec. 26, Ch. 550, L. 1997; Sec. 41-5-403, MCA 1995; redes. 41-5-1304 by Sec. 47, Ch. 286, L. 1997.

Cross-References

Suspending driving privileges of persons under age 18, 61-5-217.

Part 14

Formal Proceeding -- Procedure

41-5-1401. Petition -- county attorney -- procedure -- release from custody.

(1) The county attorney may apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth in need of intervention. The application must be supported by evidence that the youth court may require. If it appears that there is probable cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.

(2) A petition charging a youth who is held in detention or a youth assessment center must be filed within 7 working days from the date the youth was first taken into custody or the petition must be dismissed and the youth released unless good cause is shown to further detain the youth.

(3) If a petition is not filed under this section, the complainant and victim, if any, must be informed by the probation officer or assessment officer of the action and the reasons for not filing and must be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer or assessment officer, and make the final decision as to whether a petition is filed.

History: En. Secs. 10, 49(3)(f), Ch. 286, L. 1997.

41-5-1402. Petition -- form and content. (1) A petition initiating proceedings under this chapter must be signed by the county attorney, must be entitled "In the Matter of...., a youth", and must set forth with specificity:

(a) the facts necessary to invoke the jurisdiction of the court, together with a statement alleging the youth to be a delinquent youth or a youth in need of intervention;

(b) the charge of an offense, that must:

(i) state the name of the offense;

(ii) cite in customary form the statute, rule, or other provisions of law that the youth is alleged to have violated;

(iii) state the facts constituting the offense in ordinary and concise language and in a manner that enables a person of common understanding to know what is intended; and

(iv) state the time and place of the offense as definitely as possible;

(c) the name, birth date, and residence address of the youth;

(d) the names and residence addresses of the parents, guardian, or spouse of the youth and, if the parents, guardian, or spouse do not reside or cannot be found within the state or if there is none, the adult relative residing nearest to the court;

(e) whether the youth is in detention, a youth assessment center, or shelter care and, if so, the place of detention, assessment, or shelter care and the time that the youth was detained or sheltered;

(f) if any of the matters required to be set forth by this section are not known, a statement of those matters and the fact that they are not known; and

(g) a list of witnesses to be used in proving the commission of the offense or offenses charged in the petition, together with their residence addresses. The names and addresses of any witnesses discovered after the filing of the petition must be furnished to the youth upon request.

(2) When a county attorney files a delinquency petition alleging that a youth committed an offense that would be a felony if committed by an adult and that is transferable under 41-5-206 or in which a youth 12 years of age or older allegedly used a firearm, the county attorney shall indicate in the petition whether the county attorney designates the proceeding an extended jurisdiction juvenile prosecution. When the county attorney files a delinquency petition alleging that a youth committed any other offense that would be a felony if committed by an adult, the county attorney may request that the court designate the proceeding an extended jurisdiction juvenile prosecution.

History: En. 10-1215 by Sec. 15, Ch. 329, L. 1974; amd. Sec. 7, Ch. 571, L. 1977; R.C.M. 1947, 10-1215; amd. Sec. 5, Ch. 498, L. 1997; amd. Secs. 27, 76, Ch. 550, L. 1997; Sec. 41-5-501, MCA 1995; redes. 41-5-1402 by Sec. 47, Ch. 286, L. 1997.

41-5-1403. Summons. (1) After a petition has been filed, summons must be served directly to:

(a) the youth;

(b) the youth's parent or parents having actual custody of the youth or the youth's guardian or custodian, as the case may be; and

(c) other persons as the court may direct.

(2) The summons must:

(a) require the parties to whom it is directed to appear personally before the court at the time fixed by the summons to answer the allegations of the petition;

(b) advise the parties of their right to counsel under the Montana Youth Court Act; and

(c) have attached to it a copy of the petition.

(3) The court may endorse upon the summons an order directing the person or persons having the physical custody or control of the youth to bring the youth to the hearing.

(4) If it appears to the court that the youth needs to be placed in detention or shelter care, the judge may endorse on the summons an order directing the officer serving the summons to at once take the youth into custody and to take the youth to the place of detention or shelter care designated by the court, subject to the rights of the youth and parent or person having legal custody of the youth as set forth in the provisions of the Montana Youth Court Act relating to detention and shelter care criteria and postdetention proceedings.

(5) If a youth is placed in detention or shelter care under any provision of this chapter pending an adjudication, the court shall, as soon as practicable, conduct a probable cause hearing as provided in 41-5-332.

(6) The youth court judge may also admit the youth to bail in accordance with Title 46, chapter 9.

History: En. 10-1216 by Sec. 16, Ch. 329, L. 1974; amd. Sec. 8, Ch. 571, L. 1977; R.C.M. 1947, 10-1216; amd. Sec. 10, Ch. 475, L. 1987; amd. Sec. 9, Ch. 515, L. 1987; amd. Sec. 9, Ch. 547, L. 1991; amd. Sec. 25, Ch. 286, L. 1997; Sec. 41-5-502, MCA 1995; redes. 41-5-1403 by Sec. 47, Ch. 286, L. 1997.

41-5-1404. Service of summons. (1) Any youth who is the subject of a proceeding under this chapter must be personally served with summons at least 5 days before the time stated for appearance.

(2) Service of summons on all other persons designated in 41-5-1403(1) shall be made in accordance with Rule 4D of the Montana Rules of Civil Procedure, except that in all cases service shall be completed at least 5 days before the time stated for appearance.

(3) If a party referred to in subsection (2) herein is not personally served before a hearing and has not secluded himself with an attempt to delay or disrupt any proceeding, such party may appear within a reasonable time subsequent to the hearing and, on motion to the court, request a rehearing. The motion may be granted at the discretion of the judge if a rehearing would be in the best interest of the youth.

(4) The court may authorize payment from county funds of costs of service and necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

(5) An actual abandonment of a youth by his parent or parents shall constitute a waiver of summons and notice requirements by the parent or parents. A return endorsed upon the summons showing inability to serve summons constitutes prima facie evidence of actual abandonment.

(6) The youth court may, in the interests of justice, shorten the notice requirements contained herein, and such notice of shortened time shall be endorsed on the summons.

(7) A party, other than the youth, may waive service of summons on himself by written stipulation or by voluntary appearance at the hearing. If the youth is present at the hearing, his counsel may waive service of summons in his behalf.

History: En. 10-1217 by Sec. 17, Ch. 329, L. 1974; amd. Sec. 5, Ch. 100, L. 1977; R.C.M. 1947, 10-1217; Sec. 41-5-503, MCA 1995; redes. 41-5-1404 by Sec. 47, Ch. 286, L. 1997.

41-5-1405. Disqualification of judges. The statutes of the state of Montana relating to disqualification of judges in criminal proceedings shall apply to all proceedings under this chapter.

History: En. 10-1223 by Sec. 23, Ch. 329, L. 1974; R.C.M. 1947, 10-1223; amd. Sec. 2, Ch. 515, L. 1987; Sec. 41-5-202, MCA 1995; redes. 41-5-1405 by Sec. 47, Ch. 286, L. 1997.

41-5-1406 through 41-5-1410 reserved.

41-5-1411. Appointment of guardian ad litem. The court at any stage of a proceeding on a petition under this chapter may appoint a guardian ad litem for a youth if the youth has no parent or guardian appearing in his behalf or if their interests conflict with those of the youth. A party to the proceeding or an employee or representative of a party may not be appointed as guardian ad litem.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(4); Sec. 41-5-512, MCA 1995; redes. 41-5-1411 by Sec. 47, Ch. 286, L. 1997.

Cross-References

Appointment of guardian -- document requiring seal, 3-1-206.

41-5-1412. Rights and obligations -- persons to be advised -- contempt. (1)
A person afforded rights under this chapter must be advised of those rights and any other rights existing under law at the time of the person's first appearance in a proceeding on a petition under the Montana Youth Court Act and at any other time specified in that act or other law.

(2) A person must be advised of obligations, including possible assessments and related costs, that may arise under this chapter, including the possibility that the person may be required to reimburse the state or local governments for costs attributable to the adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, supervision, care, custody, and treatment of the youth and may be required to participate in counseling, treatment, or other support services.

(3) A youth's parents or guardians are obligated to assist and support the youth court in implementing the court's orders concerning a youth under youth court jurisdiction, and the parents or guardians are subject to the court's contempt powers if they fail to do so. The youth court personnel shall assist the parents to the extent

possible in implementing and enforcing interventions and consequences designed to modify the youth's behavior.

(4) A parent has a right to review the results of a youth assessment and to place a rebuttal, statement, or additional information in the youth's file in youth court.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(6); amd. Sec. 29, Ch. 550, L. 1997; Sec. 41-5-515, MCA 1995; redes. 41-5-1412 by Sec. 47, Ch. 286, L. 1997.

41-5-1413. Right to counsel. In all proceedings following the filing of a petition alleging that a youth is a delinquent youth or youth in need of intervention, the youth and the parents or guardian of the youth must be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained, counsel must be appointed for the youth if the parents or guardian and the youth are unable to provide counsel unless the right to appointed counsel is waived by the youth and the parents or guardian. Neither the youth nor the youth's parents or guardian may waive counsel after a petition has been filed if commitment to the department for a period of more than 6 months may result from adjudication.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(3); amd. Sec. 1, Ch. 386, L. 1979; amd. Sec. 4, Ch. 484, L. 1981; amd. Sec. 60, Ch. 609, L. 1987; amd. Sec. 28, Ch. 550, L. 1997; Sec. 41-5-511, MCA 1995; redes. 41-5-1413 by Sec. 47, Ch. 286, L. 1997.

41-5-1414. Right to confront witnesses. In a proceeding on a petition, a party is entitled to:

- (1) the opportunity to introduce evidence and otherwise be heard on the party's own behalf;
- (2) confront and cross-examine witnesses testifying against the party; and
- (3) admit or deny the allegations against the party in the petition.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(5); Sec. 41-5-513, MCA 1995; redes. 41-5-1414 by Sec. 47, Ch. 286, L. 1997.

41-5-1415. Admissibility of confession or illegally seized evidence. In a proceeding alleging a youth to be a delinquent youth:

- (1) an extrajudicial statement that would be constitutionally inadmissible in a criminal matter may not be received in evidence;
- (2) evidence illegally seized or obtained may not be received in evidence to establish the allegations of a petition against a youth; and

(3) an extrajudicial admission or confession made by the youth out of court is insufficient to support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other evidence.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(1)(c); amd. Sec. 7, Ch. 528, L. 1995; Sec. 41-5-514, MCA 1995; redes. 41-5-1415 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 9, Ch. 532, L. 1999.

41-5-1416. Victims and witnesses of juvenile felony offenses -- consultation -- notification of proceedings. (1) The attorney general shall ensure that the services and assistance that must be provided under Title 46, chapter 24, to a victim or witness of a crime are also provided to the victim or witness of a juvenile felony offense.

(2) In a proceeding filed under this part, the county attorney or a designee shall consult with the victim of a juvenile felony offense regarding the disposition of the case, including:

(a) a dismissal of the petition filed under 41-5-1402;

(b) a reduction of the charge to misdemeanor;

(c) the release of the youth from detention or shelter care pending the adjudicatory hearing or pending a probable cause hearing. The consultation required by this subsection (2)(c) must take place prior to the youth's release, whether or not the county attorney or designee has received information from the victim under subsection (3)(a), unless the county attorney or designee is unable to contact the victim after making a good faith effort to contact the victim.

(d) the disposition of the youth.

(3) (a) Whenever possible, a person described in subsection (3)(b) who provides the appropriate agency with a current address and telephone number must receive prompt advance notification of youth court case proceedings, including:

(i) the filing of a petition under 41-5-1402;

(ii) the release of the youth from detention or shelter care; and

(iii) proceedings in the adjudication of the petition, including, when applicable, entry of a consent decree under 41-5-1501, the setting of a date for the adjudicatory hearing under 41-5-1502, the setting of a date for the dispositional hearing under 41-5-1511, the disposition made, and the release of the youth from a youth correctional facility.

(b) A person entitled to notification under this subsection (3) must be a victim, as defined in 41-5-103, of a juvenile felony offense.

(c) The county attorney or a designee who provides the consultation regarding the disposition of a case required in subsection (2) shall give the victim the opportunity to provide the victim's current telephone number and address and shall provide the victim with the name and address of the agency or agencies responsible for operation of youth detention, correctional, or shelter care facilities that are responsible for the custody of the youth.

(d) The appropriate official or agency shall provide the notification required by this subsection (3) in the same manner as required for offenses committed by adults.

(4) For purposes of this section, "juvenile felony offense" means an offense committed by a juvenile that, if committed by an adult, would constitute a felony offense. The term includes any offense for which a juvenile may be declared a serious juvenile offender, as defined in 41-5-103.

History: En. Sec. 1, Ch. 170, L. 1991; amd. Sec. 6, Ch. 466, L. 1995; amd. Sec. 43, Ch. 286, L. 1997; amd. Sec. 57, Ch. 550, L. 1997; Sec. 46-24-207, MCA 1995; redes. 41-5-1416 by Sec. 77, Ch. 550, L. 1997; amd. Sec. 1, Ch. 102, L. 2001.

41-5-1417 through 41-5-1420 reserved.

41-5-1421. Posttrial motions. All posttrial motions and other remedies available to an adult in a criminal proceeding under the Montana Code of Criminal Procedure are available to a youth proceeded against under this chapter.

History: En. 10-1218 by Sec. 18, Ch. 329, L. 1974; amd. Sec. 6, Ch. 100, L. 1977; amd. Sec. 9, Ch. 571, L. 1977; R.C.M. 1947, 10-1218(7); Sec. 41-5-531, MCA 1995; redes. 41-5-1421 by Sec. 47, Ch. 286, L. 1997.

41-5-1422. Modification of court orders -- notice to department -- hearing.

(1) An order of the court may be modified at any time.

(2) In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and a subsequent hearing.

History: En. Sec. 40, Ch. 550, L. 1997.

41-5-1423. Appeals. (1) Any party other than the state may appeal from a judgment of the court to the supreme court in the manner provided by law. The appeal shall be heard by the supreme court upon the files, records, and transcript of the evidence of the juvenile court.

(2) The appeal to the supreme court does not stay the judgment appealed from, but the supreme court may order a stay upon application and hearing consistent with the provisions of this chapter if suitable provision is made for the care and custody of the youth. If the order appealed from grants the legal custody of the youth to or withholds it from one or more of the parties to the appeal, the appeal shall be heard at the earliest practicable time.

History: En. 10-1225 by Sec. 25, Ch. 329, L. 1974; R.C.M. 1947, 10-1225; Sec. 41-5-532, MCA 1995; redes. 41-5-1423 by Sec. 47, Ch. 286, L. 1997.

41-5-1424 through 41-5-1430 reserved.

41-5-1431. Probation revocation proceeding -- petition -- hearing -- disposition. (1) A youth on probation incident to an adjudication that the youth is a delinquent youth or a youth in need of intervention and that the youth has violated a term of probation may be proceeded against in a probation revocation proceeding. A proceeding to revoke probation must be done by filing in the original proceeding a petition styled "petition to revoke probation".

(2) Petitions to revoke probation must be screened, reviewed, and prepared in the same manner and must contain the same information as petitions alleging delinquency or need of intervention. Procedures of the Montana Youth Court Act regarding taking into custody and detention apply. The petition must state the terms of probation alleged to have been violated and the factual basis for the allegations.

(3) The standard of proof in probation revocation proceedings is the same standard used in probation revocation of an adult, and the hearing must be before the youth court without a jury. In all other respects, proceedings to revoke probation are governed by the procedures, rights, and duties applicable to proceedings on petitions alleging that the youth is delinquent or a youth in need of intervention. If a youth is found to have violated a term of probation, the youth court may make any judgment of disposition that could have been made in the original case.

History: En. 10-1228 by Sec. 28, Ch. 329, L. 1974; R.C.M. 1947, 10-1228; amd. Sec. 45, Ch. 550, L. 1997; Sec. 41-5-533, MCA 1995; redes. 41-5-1431 by Sec. 47, Ch. 286, L. 1997.

41-5-1432. Enforcement of restitution orders. If the court orders payment of restitution and the youth fails to pay the restitution in accordance with the payment schedule or structure established by the court or probation officer, the youth's probation officer may, on the officer's own motion or at the request of the victim, file a petition for violation of probation or ask the court to hold a hearing to determine whether the conditions of probation should be changed. The probation officer shall ask for a hearing if the restitution has not been paid prior to 60 days before the term of probation expires. The court shall schedule and hold the hearing before the youth's term of probation expires.

History: En. Sec. 12, Ch. 498, L. 1997.

Part 15

Formal Proceeding -- Hearing -- Disposition

Part Cross-References

Victims and witnesses of juvenile felony offenses -- consultation -- notification of proceedings, 41-5-1416.

41-5-1501. Consent decree with petition. (1) (a) Subject to the provisions of subsection (2), after the filing of a petition under 41-5-1402 and before the entry of a judgment, the court may, on motion of counsel for the youth or on the court's own motion, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with probation services and agreed to by all necessary parties. The court's order continuing the youth under supervision under this section is known as a "consent decree". Except as provided in subsection (1)(b), the procedures used and dispositions permitted under this section must conform to the procedures and dispositions specified in 41-5-1302 through 41-5-1304 relating to consent adjustments without petition and the responsibility of the youth's parents or guardians to pay a contribution for the costs of placement in substitute care.

(b) A youth may be placed in detention for up to 10 days on a space-available basis at the county's expense, which is not reimbursable under part 19 of this chapter.

(2) A consent decree under this section may not be used by the court unless the youth admits guilt for a charge of an offense set forth in the petition and accepts responsibility for the youth's actions.

(3) If the youth or the youth's counsel objects to a consent decree, the court shall proceed to findings, adjudication, and disposition of the case.

(4) If, either prior to discharge by probation services or expiration of the consent decree, a new petition alleging that the youth is a delinquent youth or a youth in need of intervention is filed against the youth or if the youth fails to fulfill the expressed terms and conditions of the consent decree, the petition under which the youth was continued under supervision may be reinstated in the discretion of the county attorney in consultation with probation services. In the event of reinstatement, the proceeding on the petition must be continued to conclusion as if the consent decree had never been entered.

(5) A youth who is discharged by probation services or who completes a period under supervision without reinstatement of the original petition may not again be proceeded against in any court for the same offense alleged in the petition, and the original petition must be dismissed with prejudice. This subsection does not preclude a civil suit against the youth for damages arising from the youth's conduct.

(6) If the terms of the consent decree extend for a period in excess of 6 months, the probation officer shall at the end of each 6-month period submit a report that must be reviewed by the court.

(7) A consent decree with petition under this section may not be used to dispose of a youth's alleged second or subsequent offense if that offense would be a felony if committed by an adult or third or subsequent offense if that offense would be a misdemeanor if committed by an adult unless it is recommended by the county attorney and accepted by the youth court judge.

History: En. 10-1224 by Sec. 24, Ch. 329, L. 1974; amd. Sec. 8, Ch. 100, L. 1977; R.C.M. 1947, 10-1224; amd. Sec. 5, Ch. 696, L. 1991; amd. Sec. 42, Ch. 550, L. 1997; Sec. 41-5-524, MCA 1995; redes. 41-5-1501 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 2, Ch. 523, L. 1999; amd. Sec. 10, Ch. 532, L. 1999.

41-5-1502. Adjudicatory hearing. (1) Prior to any adjudicatory hearing, the court shall determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses alleged in the petition, the youth or the youth's parent, guardian, or attorney may demand a jury trial on the contested offenses. In the absence of a demand, a jury trial is waived. If the youth denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court judge. The adjudicatory hearing must be set immediately and accorded a preferential priority.

(2) An adjudicatory hearing must be held to determine whether the contested offenses are supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in need of intervention. If the hearing is before a jury, the jury's function is to determine whether the youth committed the contested offenses. If the hearing is before the youth court judge without a jury, the judge shall make and record findings on all issues. If the allegations of the petitions are not established at the hearing, the youth court shall dismiss the petition and discharge the youth from custody.

(3) Prior to an adjudicatory hearing before a jury, the court shall conduct an omnibus hearing in accordance with 46-13-110.

(4) The jury trial must be conducted in accordance with Title 46, chapter 16.

(5) An adjudicatory hearing must be recorded verbatim by whatever means the court considers appropriate.

(6) The youth charged in a petition must be present at the hearing and, if brought from detention to the hearing, may not appear clothed in institutional clothing.

(7) In a hearing on a petition under this section, the general public may not be excluded, except that in the court's discretion, the general public may be excluded if the petition alleges that the youth is in need of intervention.

(8) If, on the basis of a valid admission by a youth of the allegations of the petition or after the hearing required by this section, a youth is found to be a delinquent youth or a youth in need of intervention, the court shall schedule a dispositional hearing under this chapter.

(9) When a jury trial is required in a case, it may be held before a jury selected as provided in Title 25, chapter 7, part 2, and in Rule 47, M.R.Civ.P.

History: En. 10-1220 by Sec. 20, Ch. 329, L. 1974; amd. Sec. 7, Ch. 100, L. 1977; amd. Sec. 1, Ch. 344, L. 1977; R.C.M. 1947, 10-1220; amd. Sec. 1, Ch. 668, L. 1979; amd. Sec. 1, Ch. 469, L. 1981; amd. Sec. 3, Ch. 466, L. 1995; amd. Sec. 26, Ch. 286, L. 1997; amd. Secs. 30, 76, Ch. 550, L. 1997; Sec. 41-5-521, MCA 1995; redes. 41-5-1502 by Sec. 47, Ch. 286, L. 1997.

41-5-1503. Medical or psychological evaluation of youth -- urinalysis. (1) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-331. The county determined by the court as the residence of the youth is responsible for the cost of the evaluation, except as provided

in subsection (2). A county may contract with the department or other public or private agencies to obtain evaluation services ordered by the court.

(2) The youth court shall determine the financial ability of the youth's parents or guardians to pay the cost of an evaluation ordered by the court under subsection (1). If they are financially able, the court shall order the youth's parents or guardians to pay all or part of the cost of the evaluation.

(3) Subject to 41-5-1512(1)(o)(i), the youth court may not order an evaluation or placement of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is listed under 41-5-206.

(4) An evaluation of a youth may not be performed at the Montana state hospital unless the youth is transferred to the district court under 41-5-208 or 41-5-1605 or the jurisdiction of the youth court is terminated following the filing of an information in district court pursuant to 41-5-206.

(5) In a proceeding alleging a youth to be a delinquent youth, upon a finding of an offense related to use of alcohol or illegal drugs, the court may order the youth to undergo urinalysis for the purpose of determining whether the youth is using alcoholic beverages or illegal drugs.

History: En. Sec. 39, Ch. 550, L. 1997; amd. Sec. 11, Ch. 532, L. 1999; amd. Sec. 7, Ch. 587, L. 2001.

41-5-1504. Finding of suffering from mental disorder and meeting other criteria -- rights -- limitation on placement. (1) A youth who is found to be suffering from a mental disorder, as defined in 53-21-102, and who meets the criteria in 53-21-126(1) is entitled to all rights provided by 53-21-114 through 53-21-119.

(2) A youth who, prior to placement or sentencing, is found to be suffering from a mental disorder, as defined in 53-21-102, and who meets the criteria in 53-21-126(1) may not be committed or sentenced to a state youth correctional facility.

(3) A youth who is found to be suffering from a mental disorder, as defined in 53-21-102, and who meets the criteria in 53-21-126(1) after placement in or sentencing to a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

History: En. Secs. 36, 78(1)(c), Ch. 550, L. 1997.

41-5-1505 through 41-5-1510 reserved.

41-5-1511. Dispositional hearing -- contributions by parents or guardians for expenses. (1) As soon as practicable after a youth is found to be a delinquent youth or a youth in need of intervention, the court shall conduct a dispositional hearing. The dispositional hearing may involve a determination of the financial ability of the youth's parents or guardians to pay a contribution for the cost of the adjudication, disposition,

supervision, care, commitment, and treatment of the youth as required in 41-5-1525, including the costs of necessary medical, dental, and other health care.

(2) Before conducting the dispositional hearing, the court shall direct that a youth assessment or predisposition report be made in writing by a probation officer or an assessment officer concerning the youth, the youth's family, the youth's environment, and other matters relevant to the need for care or rehabilitation or disposition of the case, including a statement by the victim or the victim's family. The youth court may have the youth examined, and the results of the examination must be made available to the court as part of the youth assessment or predisposition report. The court may order the examination of a parent or guardian whose ability to care for or supervise a youth is at issue before the court. The results of the examination must be included in the youth assessment or predisposition report. The youth or the youth's parents, guardian, or counsel has the right to subpoena all persons who have prepared any portion of the youth assessment or predisposition report and has the right to cross-examine the parties at the dispositional hearing.

(3) Defense counsel must be furnished with a copy of the youth assessment or predisposition report and psychological report prior to the dispositional hearing.

(4) The dispositional hearing must be conducted in the manner set forth in 41-5-1502(5) through (7). The court shall hear all evidence relevant to a proper disposition of the case best serving the interests of the youth, the victim, and the public. The evidence must include but is not limited to the youth assessment and predisposition report provided for in subsection (2) of this section.

(5) If the court finds that it is in the best interest of the youth, the youth, the youth's parents or guardian, or the public may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment and rehabilitation.

History: En. 10-1221 by Sec. 21, Ch. 329, L. 1974; R.C.M. 1947, 10-1221; amd. Sec. 4, Ch. 246, L. 1979; amd. Sec. 9, Ch. 567, L. 1979; amd. Sec. 5, Ch. 484, L. 1981; amd. Sec. 31, Ch. 465, L. 1983; amd. Sec. 10, Ch. 515, L. 1987; amd. Sec. 61, Ch. 609, L. 1987; amd. Sec. 10, Ch. 696, L. 1991; amd. Sec. 8, Ch. 528, L. 1995; amd. Sec. 27, Ch. 286, L. 1997; amd. Sec. 31, Ch. 550, L. 1997; Sec. 41-5-522, MCA 1995; redes. 41-5-1511 by Sec. 47, Ch. 286, L. 1997.

41-5-1512. Disposition of youth in need of intervention or youth who violate consent adjustments. (1) If a youth is found to be a youth in need of intervention or to have violated a consent adjustment, the youth court may enter its judgment making one or more of the following dispositions:

(a) place the youth on probation. The youth court shall retain jurisdiction in a disposition under this subsection.

(b) place the youth in a residence that ensures that the youth is accountable, that provides for rehabilitation, and that protects the public. Before placement, the sentencing judge shall seek and consider placement recommendations from the youth placement committee.

(c) commit the youth to the department in jurisdictions that do not participate in the juvenile delinquency intervention program or to the youth court in jurisdictions that participate in the juvenile delinquency intervention program for the purposes of funding a private, out-of-home, residential placement subject to the conditions in 41-5-1522. In an order committing a youth to the department or to the youth court, the court shall determine whether continuation in the youth's own home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home.

(d) order restitution for damages that result from the offense for which the youth is disposed by the youth or by the person that contributed to the delinquency of the youth;

(e) require the performance of community service;

(f) require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to receive counseling services;

(g) require the medical and psychological evaluation of the youth, the youth's parents or guardians, or the persons having legal custody of the youth;

(h) require the parents, guardians, or other persons having legal custody of the youth to furnish services the court may designate;

(i) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community;

(j) subject to the provisions of 41-5-1504, commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is found to be suffering from a mental disorder, as defined in 53-21-102, and meets the criteria in 53-21-126(1);

(k) place the youth under home arrest as provided in Title 46, chapter 18, part 10;

(l) order confiscation of the youth's driver's license, if the youth has one, by the probation officer for a specified period of time, not to exceed 90 days. The probation officer shall notify the department of justice of the confiscation and its duration. The department of justice may not enter the confiscation on the youth's driving record. The probation officer shall notify the department of justice when the confiscated driver's license has been returned to the youth. A youth's driver's license may be confiscated under this subsection more than once. The probation officer may, in the probation officer's discretion and with the concurrence of a parent or guardian, return a youth's confiscated driver's license before the termination of the time period for which it had been confiscated. The confiscation may not be used by an insurer as a factor in determining the premium or part of a premium to be paid for motor vehicle insurance covering the youth or a vehicle or vehicles driven by the youth, nor may it be used as grounds for denying coverage for an accident or other occurrence under an existing policy.

(m) order the youth to pay a contribution covering all or a part of the costs for the adjudication, disposition, attorney fees for the costs of prosecuting or defending the

youth, costs of detention, supervision, care, custody, and treatment of the youth, including the costs of counseling;

(n) order the youth to pay a contribution covering all or a part of the costs of a victim's counseling;

(o) defer imposition of sentence for up to 45 days for a placement evaluation at a suitable program or facility with the following conditions:

(i) The court may not order placement for evaluation at a youth correctional facility of a youth who has committed an offense that would not be a criminal offense if committed by an adult or a youth who has violated a consent adjustment.

(ii) The placement for evaluation must be on a space-available basis at the county's expense, which is not reimbursable under part 19 of this chapter.

(iii) The court may require the youth's parents or guardians to pay a contribution covering all or a part of the costs of the evaluation if the court determines after an examination of financial ability that the parents or guardians are able to pay the contribution. Any remaining unpaid costs of evaluation are the financial responsibility of the judicial district of the court that ordered the evaluation.

(p) order placement of a youth in a youth assessment center for up to 10 days;

(q) order the youth to participate in mediation that is appropriate for the offense committed.

(2) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may order a local government entity to pay for evaluation and in-state transportation of a youth.

(3) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the account established for that district under 41-5-130 without approval from the cost containment review panel.

History: En. 10-1222 by Sec. 22, Ch. 329, L. 1974; amd. Sec. 10, Ch. 571, L. 1977; R.C.M. 1947, 10-1222; amd. Sec. 2, Ch. 29, L. 1979; amd. Sec. 5, Ch. 246, L. 1979; amd. Sec. 2, Ch. 129, L. 1983; amd. Sec. 2, Ch. 233, L. 1983; amd. Sec. 27, Ch. 361, L. 1983; amd. Sec. 8, Ch. 363, L. 1983; amd. Sec. 5, Ch. 465, L. 1983; amd. Sec. 6, Ch. 531, L. 1985; amd. Sec. 1, Ch. 612, L. 1985; amd. Sec. 8, Ch. 14, Sp. L. June 1986; amd. Sec. 101, Ch. 370, L. 1987; amd. Sec. 11, Ch. 515, L. 1987; amd. Sec. 62, Ch. 609, L. 1987; amd. Sec. 1, Ch. 172, L. 1989; amd. Sec. 1, Ch. 210, L. 1989; amd. Sec. 7, Ch. 434, L. 1989; amd. Sec. 5, Ch. 616, L. 1989; amd. Sec. 9, Ch. 105, L. 1991; amd. Sec. 1, Ch. 201, L. 1991; amd. Sec. 1, Ch. 511, L. 1991; amd. Sec. 4, Ch. 696, L. 1991; amd. Sec. 1, Ch. 358, L. 1993; amd. Sec. 8, Ch. 438, L. 1995; amd. Sec. 195, Ch. 546, L. 1995; amd. Sec. 3, Ch. 185, L. 1997; amd. Sec. 1, Ch. 375, L. 1997; amd. Secs. 33, 78(1)(b), Ch. 550, L. 1997; Sec. 41-5-523, MCA 1995; redes. 41-5-1512 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 8, Ch. 587, L. 2001.

Cross-References

Suspending driving privileges of persons under age 18, 61-5-217.

41-5-1513. Disposition -- delinquent youth -- restrictions. (1) If a youth is found to be a delinquent youth, the youth court may enter its judgment making one or more of the following dispositions:

(a) any one or more of the dispositions provided in 41-5-1512;

(b) subject to 41-5-1504, 41-5-1512(1)(o)(i), and 41-5-1522, commit the youth to the department for placement in a state youth correctional facility and recommend to the department that the youth not be released until the youth reaches 18 years of age. The provisions of 41-5-355 relating to alternative placements apply to placements under this subsection (1)(b). The court may not place a youth adjudicated to be a delinquent youth in a state youth correctional facility for an act that would be a misdemeanor if committed by an adult unless:

- (i) the youth committed four or more misdemeanors in the prior 12 months;
- (ii) a psychiatrist or a psychologist licensed by the state or a licensed clinical professional counselor or a licensed clinical social worker has evaluated the youth and recommends placement in a state youth correctional facility; and
- (iii) the court finds that the youth will present a danger to the public if the youth is not placed in a state youth correctional facility.

(c) require a youth found to be a delinquent youth, as the result of the commission of an offense that would be a sexual offense or violent offense, as defined in 46-23-502, if committed by an adult, to register as a sexual or violent offender pursuant to Title 46, chapter 23, part 5. The youth court shall retain jurisdiction in a disposition under this subsection.

(d) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility, subject to the provisions of subsection (2), if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release or an alternative placement.

(e) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult.

(2) If a youth has been adjudicated for a sex offense, the youth court may require completion of sex offender treatment before a youth is discharged.

(3) The court may not order a local government entity to pay for care, treatment, intervention, or placement. A court may order a local government entity to pay for evaluation and in-state transportation of a youth.

(4) The court may not order a state government entity to pay for care, treatment, intervention, placement, or evaluation that results in a deficit in the account established for that district under 41-5-130 without approval from the cost containment review panel.

History: En. Sec. 34, Ch. 550, L. 1997; amd. Sec. 12, Ch. 532, L. 1999; amd. Sec. 9, Ch. 587, L. 2001; amd. Sec. 1, Ch. 157, L. 2003.

Compiler's Comments

<Y2003

2003 Amendment: Chapter 157 in (1)(b) deleted former second sentence that read: "The court may not place a youth adjudicated delinquent in a state youth correctional facility for an offense that would be a misdemeanor if committed by an adult unless the court finds that the youth presents a danger to the public safety and that the placement is recommended by a mental health professional after evaluation of the youth"; and inserted introductory clause and (1)(b)(i) through (1)(b)(iii) providing that a delinquent youth may not be placed in a state youth correctional facility for an act that would be a misdemeanor if committed by an adult unless certain conditions exist. Amendment effective October 1, 2003.

Cross-References

State youth correctional facilities, 52-5-101.

41-5-1514 through 41-5-1520 reserved.

41-5-1521. Restitution. (1) In determining whether restitution, as authorized by 41-5-1304, 41-5-1512, or 41-5-1513, is appropriate in a particular case, the following factors may be considered in addition to any other evidence:

- (a) the age of the youth;
- (b) the ability of the youth to pay;
- (c) the ability of the parents, guardian, or those that contributed to the youth's delinquency or need for intervention to pay;
- (d) the amount of damage to the victim; and
- (e) legal remedies of the victim. However, the ability of the victim or the victim's insurer to stand any loss may not be considered.

(2) Restitution paid by a youth is subject to subrogation as provided in 46-18-248.

History: En. Sec. 32, Ch. 550, L. 1997; amd. Sec. 76, Ch. 550, L. 1997.

41-5-1522. Commitment to department -- restrictions on placement. When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-123 by the youth placement committee. Placement is subject to the following limitations:

(1) A youth may not be held in a state youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the power of the department to enter into a parole agreement with the youth pursuant to 52-5-126.

(2) A youth may not be placed in or transferred to a state adult correctional facility or other facility used for the execution of sentences of adults convicted of crimes.

(3) The department may not place a youth in need of intervention, a youth adjudicated delinquent for commission of an act that would not be an offense if committed by an adult, or a youth who violates a consent adjustment in a state youth correctional facility.

History: En. Sec. 35, Ch. 550, L. 1997.

41-5-1523. Commitment to department -- supervision. (1) A youth placed in a state youth correctional facility or other facility or program operated by the department or who signs a parole agreement under 52-5-126 must be supervised by the department.

(2) A youth who is placed in any private, out-of-home, residential placement by the youth court or the youth court's juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction over the youth under 41-5-205, whether or not the youth is committed to the department for purposes of funding a private, out-of-home, residential placement. Supervision by the youth probation officer includes but is not limited to:

(a) submitting information and documentation necessary for the person, committee, or team that is making the placement recommendation to determine an appropriate placement for the youth;

(b) securing approval for payment of special education costs from the youth's school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

(c) submitting an application to a facility in which the youth may be placed; and

(d) case management of the youth while in a private, out-of-home, residential placement and upon release until discharged by the department.

History: En. Sec. 37, Ch. 550, L. 1997.

41-5-1524. Commitment to department -- transfer of records. Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of medical reports, social history material, youth assessment material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

History: En. Sec. 38, Ch. 550, L. 1997.

41-5-1525. Contribution for costs -- order for contribution -- exceptions -- collection. (1) If a youth is placed in substitute care, a youth assessment center, or detention requiring payment by any state or local government agency or committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of

detention, supervision, care, custody, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(2) If the court determines that a youth's parents or guardians are financially able to pay a contribution for adjudication, disposition, attorney fees for the costs of prosecuting or defending the youth, costs of detention, or supervision as provided in subsection (1), the court shall order the youth's parents or guardians to pay a specified amount. The order must state to which state or local government agency all or a part of the contribution is due and in what order the payments must be made.

(3) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (1), the court shall order the youth's parents or guardians to pay an amount attributable to care, custody, and treatment based on the uniform child support guidelines adopted by the department of public health and human services pursuant to 40-5-209.

(4) (a) Except as provided in subsection (4)(b), contributions ordered under subsection (3) and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and must be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds that there is:

(i) good cause not to require immediate income withholding; or
(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the youth; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;
(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(5) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (3).

(6) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of public health and human services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of public health and human services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.

History: En. Sec. 41, Ch. 550, L. 1997.

Part 16

Extended Jurisdiction Prosecution Act

Part Cross-References

Extended jurisdiction -- transfer of youth to District Court after Youth Court prosecution -- jurisdiction to age 25, 41-5-208.

41-5-1601. Short title. This part may be cited as the "Extended Jurisdiction Prosecution Act".

History: En. Sec. 1, Ch. 438, L. 1995; Sec. 41-5-1101, MCA 1995; redes. 41-5-1601 by Sec. 47, Ch. 286, L. 1997.

41-5-1602. Extended jurisdiction juvenile prosecution -- designation. (1) A youth court case involving a youth alleged to have committed an offense that would be a felony if committed by an adult, except an offense punishable by death or life imprisonment or when a sentence of 100 years could be imposed, is an extended jurisdiction juvenile prosecution if:

(a) the youth was at least 14 years of age at the time of the alleged offense, the county attorney requests that the case be designated an extended jurisdiction juvenile prosecution, a hearing is held under 41-5-1603, and the court designates the case as an extended jurisdiction juvenile prosecution;

(b) the county attorney designates in the delinquency petition that the proceeding is an extended jurisdiction juvenile prosecution and the youth is alleged to have committed:

(i) an offense that is listed under 41-5-206, except an offense punishable by death or life imprisonment or when a sentence of 100 years could be imposed; or

(ii) any offense that would be a felony if committed by an adult, except an offense punishable by death or life imprisonment or when a sentence of 100 years could be imposed, in which the youth allegedly used a firearm, if the youth was at least 12 years of age at the time of the alleged offense; or

(c) after a hearing upon a motion for transfer of the matter of prosecution to the district court under 41-5-206, the court designates the case as an extended jurisdiction juvenile prosecution.

(2) To enforce the court's disposition in an extended jurisdiction juvenile prosecution, the court shall retain jurisdiction as provided in 41-5-205.

History: En. Sec. 2, Ch. 438, L. 1995; amd. Sec. 6, Ch. 498, L. 1997; Sec. 41-5-1102, MCA 1995; redes. 41-5-1602 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 4, Ch. 537, L. 1999.

41-5-1603. Hearing on request. (1) When a county attorney requests that a case be designated as an extended jurisdiction juvenile prosecution under 41-5-1602(1)(a), the court shall hold a hearing to consider the request.

(2) The hearing must be held within 30 days of the filing of the request unless good cause is shown by the county attorney or the youth that the hearing should be held later, in which case the hearing must be held within 90 days of the request.

(3) If the county attorney shows by clear and convincing evidence that designating the case as an extended jurisdiction juvenile prosecution serves public safety, the court may, within 15 days after the hearing, designate the case as an extended jurisdiction juvenile prosecution. In determining whether public safety is served, the court shall consider the factors enumerated in 41-5-1606.

History: En. Sec. 3, Ch. 438, L. 1995; amd. Sec. 7, Ch. 498, L. 1997; Sec. 41-5-1103, MCA 1995; redes. 41-5-1603 by Sec. 47, Ch. 286, L. 1997.

41-5-1604. Disposition in extended jurisdiction juvenile prosecutions.

(1) (a) After designation as an extended jurisdiction juvenile prosecution, the case must proceed with an adjudicatory hearing, as provided in 41-5-1502. If a youth in an extended jurisdiction juvenile prosecution admits to or is adjudicated to have committed an offense that would be a felony if committed by an adult, except an offense punishable by death or life imprisonment or when a sentence of 100 years could be imposed, the court shall, subject to subsection (1)(b), impose a single judgment consisting of:

(i) one or more juvenile dispositions under 41-5-1512 or 41-5-1513; and
(ii) any sentence allowed by the statute that establishes the penalty for the offense of which the youth is convicted and that would be permissible if the offender were an adult. The execution of the sentence imposed under this subsection must be stayed on the condition that the youth not violate the provisions of the disposition order and not commit a new offense.

(b) The combined period of time of a juvenile disposition under subsection (1)(a)(i) plus an adult sentence under subsection (1)(a)(ii) may not exceed the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. This subsection does not limit the power of the department to enter into a parole agreement with the youth pursuant to 52-5-126.

(2) If a youth prosecuted as an extended jurisdiction juvenile after designation by the county attorney in the delinquency petition under 41-5-1602(1)(b) admits to or is adjudicated to have committed an offense that would be a felony if committed by an adult that is not an offense described in 41-5-1602(1)(b), except an offense punishable by death or life imprisonment or when a sentence of 100 years could be imposed, the court shall adjudicate the youth delinquent and order a disposition under 41-5-1513.

(3) If a youth in an extended jurisdiction juvenile prosecution admits to or is adjudicated to have committed an offense that would not be a felony if committed by an adult, the court shall impose a disposition as provided under subsection (1)(a).

History: En. Sec. 4, Ch. 438, L. 1995; amd. Sec. 8, Ch. 498, L. 1997; amd. Sec. 52, Ch. 550, L. 1997; Sec. 41-5-1104, MCA 1995; redes. 41-5-1604 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 5, Ch. 537, L. 1999.

41-5-1605. Revocation of stay -- disposition. (1) If a court has imposed on a youth a sentence stayed under 41-5-1604(1)(a)(ii) and the youth violates the conditions of the stay or is alleged to have committed a new offense, the court may, without notice, direct that the youth be taken into immediate custody. The court shall notify the youth, the youth's counsel, and the youth's parents, guardian, or custodian in writing of the reasons alleged to exist for revocation of the stay of execution of the sentence.

(2) (a) The court shall hold a revocation hearing at which the youth is entitled to receive:

- (i) written notice of the alleged violation;
- (ii) evidence of the alleged violation;
- (iii) an opportunity to be heard in person and to present witnesses and evidence;
- (iv) the right to cross-examine witnesses, unless the court finds good cause for not allowing confrontation; and
- (v) the right to counsel.

(b) After the revocation hearing, if the court finds by a preponderance of the evidence presented that the conditions of the stay have been violated or that the youth has committed a new offense, the court shall provide the youth with a written statement of the evidence relied on and reasons for revocation and shall:

- (i) continue the stay and place the youth on probation;
- (ii) impose one or more dispositions under 41-5-1512 or 41-5-1513 if the youth is under 18 years of age; or
- (iii) subject to 41-5-206(6) and (7) and 41-5-1604(1)(b), order execution of the sentence imposed under 41-5-1604(1)(a)(ii). The court shall order credit for any time served prior to revocation under a disposition under 41-5-1604(1)(a)(i).

(3) Upon revocation and disposition under subsection (2)(b)(iii), the youth court shall transfer the case to the district court. Upon transfer, the offender's extended jurisdiction juvenile status is terminated and youth court jurisdiction is terminated. Ongoing supervision of the offender is with the department, rather than the youth court's juvenile probation services.

History: En. Sec. 5, Ch. 438, L. 1995; amd. Secs. 9, 13, Ch. 498, L. 1997; amd. Sec. 53, Ch. 550, L. 1997; Sec. 41-5-1105, MCA 1995; redes. 41-5-1605 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 6, Ch. 537, L. 1999.

41-5-1606. Public safety. (1) In determining whether the public safety is served by designating a case an extended jurisdiction juvenile prosecution, the court shall consider the following factors:

(a) the seriousness of the alleged offense in terms of community protection, including the existence of any aggravating factors, the use of a firearm, and the impact on the victim;

(b) the culpability of the youth in committing the alleged offense, including the level of the youth's participation in planning and carrying out the offense and the existence of mitigating factors;

(c) the youth's prior record of delinquency;

(d) the youth's treatment history, including the youth's past willingness to participate meaningfully in available treatment;

(e) the adequacy of the dispositions available in the juvenile justice system; and

(f) the dispositional options available for the youth.

(2) In considering the factors listed in subsection (1), the court shall give greater weight to the seriousness of the alleged offense and the youth's prior record of delinquency than to the other listed factors.

History: En. Sec. 10, Ch. 498, L. 1997.

41-5-1607. Proceedings -- rights. A youth who is the subject of an extended jurisdiction juvenile prosecution has the right to a trial by jury and to the effective assistance of counsel, as provided in 41-5-1413.

History: En. Sec. 11, Ch. 498, L. 1997.

Part 17

Probation Officers

41-5-1701. Employment of juvenile probation officers and youth court staff. All probation officers and youth court staff are employees of the judicial branch of state government. The employees are subject to classification and compensation as determined by the judicial branch personnel plan adopted by the supreme court under 3-1-130 and must receive state employee benefits and expenses as provided in Title 2, chapter 18.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(1); amd. Sec. 3, Ch. 29, L. 1979; Sec. 41-5-701, MCA 1995; redes. 41-5-1701 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 34, Ch. 585, L. 2001; amd. Sec. 6, Ch. 152, L. 2003.

Compiler's Comments

<Y2003

2003 Amendment: Chapter 152 deleted former (1) that read: "(1) The youth court judge of each judicial district shall appoint probation officers, deputy probation officers, and part-time probation officers necessary to administer this chapter. The qualifications for part-time probation officers must approximate those required for probation officers insofar as possible. A chief probation officer must be appointed by the judge to supervise the youth division offices in the judicial district. The judge shall also ensure that the youth division offices are staffed with necessary office personnel and that the offices are properly equipped to effectively carry out the purpose and intent of this chapter. A person while serving as a law enforcement officer may not be appointed or perform the duties of a full-time or part-time probation officer"; near middle of first sentence after "youth" substituted "court staff" for "division office staff hired or appointed under subsection (1)"; and made minor changes in style. Amendment effective March 26, 2003.

41-5-1702. Repealed. Sec. 10, Ch. 152, L. 2003.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(2); amd. Sec. 1, Ch. 544, L. 1987; amd. Sec. 2, Ch. 205, L. 1995; Sec. 41-5-702, MCA 1995; redes. 41-5-1702 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 35, Ch. 585, L. 2001.

41-5-1703. Powers and duties of probation officers. (1) A probation officer shall:

- (a) perform the duties set out in 41-5-1302;
- (b) make predisposition studies and submit reports and recommendations to the court;
- (c) supervise, assist, and counsel youth placed on probation or under the probation officer's supervision, including enforcement of the terms of probation or intervention;
- (d) assist any public and private community and work projects engaged in by youth to pay fines, make restitution, and pay any other costs ordered by the court that are associated with youth delinquency or need for intervention;
- (e) perform any other functions designated by the court.

(2) A probation officer does not have power to make arrests or to perform any other law enforcement functions in carrying out the probation officer's duties except that a probation officer may take into custody any youth who violates either the youth's probation or a lawful order of the court.

(3) The duties of a full-time or part-time probation officer may not be performed by a person serving as a law enforcement officer.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(4), (5); amd. Secs. 48, 76, Ch. 550, L. 1997; Sec. 41-5-703, MCA 1995; redes. 41-5-1703 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 7, Ch. 152, L. 2003.

Compiler's Comments

<Y2003

2003 Amendment: Chapter 152 inserted (3) providing that the duties of a full-time or part-time probation officer may not be performed by a person serving as a law enforcement officer. Amendment effective March 26, 2003.

41-5-1704. Repealed. Secs. 52(1), 63(3), Ch. 585, L. 2001.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(part); amd. Sec. 1, Ch. 605, L. 1979; amd. Sec. 1, Ch. 534, L. 1981; amd. Sec. 1, Ch. 332, L. 1983; amd. Sec. 2, Ch. 580, L. 1985; amd. sec. 36, Ch. 308, L. 1995; amd. Sec. 1, Ch. 381, L. 1997; Sec. 41-5-704, MCA 1995; redes. 41-5-1704 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 7, Ch. 507, L. 2001.

41-5-1705. Repealed. Secs. 52(1), 63(3), Ch. 585, L. 2001.

History: En. 10-1234 by Sec. 34, Ch. 329, L. 1974; amd. Sec. 1, Ch. 530, L. 1975; R.C.M. 1947, 10-1234(part); amd. Sec. 2, Ch. 605, L. 1979; amd. Sec. 2, Ch. 332, L. 1983; amd. Sec. 2, Ch. 381, L. 1997; Sec. 41-5-705, MCA 1995; redes. 41-5-1705 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 8, Ch. 507, L. 2001.

41-5-1706. Juvenile probation officer training. (1) The department of justice may conduct a 40-hour juvenile probation officer basic training program and other training programs and courses for juvenile probation officers. A 40-hour juvenile probation officer basic training program and other training programs and courses for juvenile probation officers may be offered by another public agency or by a private entity if the program or course is approved by the board of crime control. If funding is available, the department shall conduct a 40-hour basic training program once a year.

(2) A juvenile probation officer who successfully completes the 40-hour basic training program or another program or course must be issued a certificate by the board.

(3) Each chief probation officer and deputy probation officer shall obtain 16 hours a year of training in subjects relating to the powers and duties of probation officers in a program or course conducted by the department of justice or approved by the board of crime control.

(4) The board may adopt rules to implement this section.

History: En. Sec. 1, Ch. 205, L. 1995; Sec. 41-5-706, MCA 1995; redes. 41-5-1706 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 36, Ch. 585, L. 2001; amd. Sec. 8, Ch. 152, L. 2003.

Compiler's Comments

<Y2003

2003 Amendment: Chapter 152 substituted (3) concerning officer training requirements for former (3) that read: "(3) A juvenile probation officer is entitled to the officer's salary and expenses, as provided in 2-18-501 through 2-18-503, while attending a program or training course. The court shall also pay any program or course registration fee." Amendment effective March 26, 2003.

41-5-1707. Assessment officers -- duties -- access to records. (1) An assessment officer employed by the state judicial branch shall perform the duties set out in 41-5-1201 and 41-5-1302.

(2) Proceedings under 41-5-1201 and 41-5-1302 that are held prior to adjudication satisfy the requirements of 20 U.S.C. 1232g(b)(1)(E)(ii)(I) of the Family Educational Rights and Privacy Act of 1974. Montana school districts may release education records to assessment officers. The assessment officer is responsible for ensuring that officials and authorities to whom that information is disclosed certify in writing to the school district that is releasing the education records that the education records or information from the education records will not be disclosed to any other party without the prior written consent of the parent of the student.

History: En. Sec. 72, Ch. 550, L. 1997; amd. Sec. 37, Ch. 585, L. 2001; amd. Sec. 9, Ch. 152, L. 2003.

Compiler's Comments

<Y2003

2003 Amendment: Chapter 152 deleted former (1) that read: "(1) The youth court judge of each judicial district may appoint and supervise assessment officers necessary to administer this chapter. Assessment officers appointed under this section are employees of the judicial branch of state government. The employees are subject to classification and compensation as determined by the judicial branch personnel plan adopted by the supreme court under 3-1-130 and must receive state employee benefits and expenses as provided in Title 2, chapter 18"; in (1) near beginning after "officer" inserted "employed by the state judicial branch"; and made minor changes in style. Amendment effective March 26, 2003.

Part 18

Custodial Care

41-5-1801. Shelter care facilities. (1) Counties, cities, or nonprofit corporations may provide by purchase, lease, or otherwise, a shelter care facility.

(2) A shelter care facility must be physically separated from any facility housing adults accused or convicted of criminal offenses.

(3) State appropriations and federal funds may be received by counties, cities, or nonprofit corporations for establishment, maintenance, or operation of a shelter care facility.

(4) A shelter care facility must be furnished in a comfortable manner.

(5) A shelter care facility may be operated in conjunction with a youth detention facility.

(6) A shelter care facility may permit a school district to use the facility as an alternative education site provided that the school district provides the educational program and personnel necessary to instruct the youth. Public schools shall follow the requirements of the federal Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq., in making education placement decisions for youth with disabilities.

History: En. Sec. 26, Ch. 227, L. 1943; Sec. 10-627, R.C.M. 1947; amd. and redes. 10-1237 by Sec. 37, Ch. 329, L. 1974; amd. Sec. 13, Ch. 571, L. 1977; R.C.M. 1947, 10-1237; amd. Sec. 11, Ch. 475, L. 1987; amd. Sec. 8, Ch. 434, L. 1989; amd. Sec. 23, Ch. 799, L. 1991; amd. Sec. 10, Ch. 528, L. 1995; amd. Sec. 49, Ch. 550, L. 1997; Sec. 41-5-802, MCA 1995; redes. 41-5-1801 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 7, Ch. 114, L. 2001; amd. Sec. 1, Ch. 61, L. 2003.

Compiler's Comments

<Y2003

2003 Amendment: Chapter 61 deleted former (2) that read: "(2) A shelter care facility may be used to provide an appropriately physically restricting setting for youth alleged or adjudicated to be a delinquent youth or a youth in need of intervention"; and made minor changes in style. Amendment effective March 5, 2003.

41-5-1802. Rules. The department shall adopt rules governing licensing procedures for regional and county detention facilities, including the requirement that a youth detention facility provide an educational program for youth in need of that service.

History: En. Sec. 5, Ch. 475, L. 1987; amd. Sec. 15, Ch. 475, L. 1987; amd. Sec. 10, Ch. 434, L. 1989; amd. Sec. 24, Ch. 799, L. 1991; Sec. 41-5-809, MCA 1995; redes. 41-5-1802 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 3, Ch. 536, L. 1999.

41-5-1803. County responsibility to provide youth detention services. (1) Each county shall provide services for the detention of youth in facilities separate from adult jails. The term "services" includes an educational program for youth in need of that service.

(2) In order to fulfill its responsibility under subsection (1), a county may:

(a) establish, operate, and maintain a holdover, a short-term detention center, or a youth detention facility at county expense;

- (b) provide shelter care facilities as authorized in 41-5-1801;
- (c) contract with another county for the use of an available shelter care facility, holdover, short-term detention center, or youth detention facility;
- (d) establish and operate a network of holdovers in cooperation with other counties;
- (e) establish a regional detention facility;
- (f) enter into an agreement with a private party under which the private party will own, operate, or lease a shelter care facility or youth detention facility for use by the county. The agreement may be made in substantially the same manner as provided for in 7-32-2232 and 7-32-2233.
- (g) contract with another state, political subdivision of another state, or an Indian tribe for use of a secure detention facility. Secure detention facilities contracted with for the purposes of this subsection (2)(g) must be licensed or certified by a state or federal agency with applicable licensing or certifying authority, or the contracting county shall determine that the out-of-state or tribal detention facility substantially complies with the licensing requirements contained in rules adopted by the department.

(3) Each county or regional detention facility must be licensed by the department in accordance with rules adopted under 41-5-1802.

(4) A county youth detention facility or a regional detention facility may contract with a school district for the provision of an educational program at the facility. The school district may use the facility as an alternative education site for the district. A contract authorized under this subsection must be made pursuant to the Interlocal Cooperation Act, Title 7, chapter 11, part 1, and must specify:

- (a) that the school district is responsible for providing for the education of students enrolled in the school district;
- (b) that the youth detention facility is responsible for providing for the education of youth held in lawful custody in the facility;
- (c) the educational program and personnel necessary to provide instruction at the facility. The district and the detention facility shall follow the requirements of the Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq., in making educational placement decisions for youth with disabilities.
- (d) the amount of funding to be contributed by the facility and the school district toward payment of the cost of establishing, operating, and maintaining the educational program.

History: En. Sec. 2, Ch. 799, L. 1991; Sec. 41-5-810, MCA 1995; redes. 41-5-1803 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 13, Ch. 532, L. 1999; amd. Sec. 4, Ch. 536, L. 1999.

41-5-1804. Regional detention facilities. (1) Two or more counties may, by contract, establish and maintain a regional detention facility.

(2) For the purpose of establishing and maintaining a regional detention facility, a county may:

- (a) issue general obligation bonds for the acquisition, purchase, construction, renovation, and maintenance of a regional detention facility;

(b) subject to 15-10-420, levy and appropriate taxes, as permitted by law, to pay its share of the cost of equipping, operating, and maintaining the facility; and

(c) exercise all powers, under the limitations prescribed by law, necessary and convenient to carry out the purposes of 41-5-1803 and this section.

(3) Contracts authorized under subsection (1) must be made pursuant to the Interlocal Cooperation Act, Title 7, chapter 11, part 1.

(4) Contracts between counties participating in a regional detention facility must:

(a) specify the responsibilities of each county participating in the agreement;

(b) designate responsibility for operation of the regional detention facility;

(c) specify the amount of funding to be contributed by each county toward payment of the cost of establishing, operating, and maintaining the regional detention facility, including the necessary expenditures for the transportation of youth to and from the facility but excluding the education costs funded by a school district pursuant to 41-5-1807;

(d) include the applicable per diem charge for the detention of youth in the facility, as well as the basis for any adjustment in the charge;

(e) specify the number of beds to be reserved for the use of each county participating in the regional detention facility; and

(f) provide an educational program for youth held in the detention facility and in need of that service.

History: En. Sec. 3, Ch. 799, L. 1991; amd. Sec. 11, Ch. 528, L. 1995; Sec. 41-5-811, MCA 1995; redes. 41-5-1804 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 5, Ch. 536, L. 1999; amd. Sec. 126, Ch. 584, L. 1999.

Cross-References

State youth correctional facilities, 52-5-101.

41-5-1805. Creation of regions -- requirements -- limitation on number of regions. (1) Counties that wish to establish a regional detention facility shall form a youth detention region.

(2) Each youth detention region must:

(a) be composed of contiguous counties participating in the regional detention facility; and

(b) include geographical areas of the state that contain a substantial percentage of the total youth population in need of detention services, as determined by the board of crime control.

(3) There may be no more than five youth detention regions established in the state at any one time.

History: En. Sec. 4, Ch. 799, L. 1991; Sec. 41-5-812, MCA 1995; redes. 41-5-1805 by Sec. 47, Ch. 286, L. 1997.

Cross-References

Board of Crime Control, 44-4-301.

41-5-1806. Contracts with nonparticipating counties. Counties participating in a regional detention facility may enter into agreements with nonparticipating counties to provide services for the detention of youth. The costs of services must be based upon a per diem charge for the detention of youth in the facility.

History: En. Sec. 5, Ch. 799, L. 1991; Sec. 41-5-813, MCA 1995; redes. 41-5-1806 by Sec. 47, Ch. 286, L. 1997.

41-5-1807. Responsibility for payment of detention costs. (1) Absent a contract or agreement between counties and except as provided in subsection (2), all costs for the detention of a youth in a county or regional detention facility, including medical costs incurred by the youth during detention, must be paid by the county at whose instance the youth is detained.

(2) A detention facility providing an educational program for youth held in lawful custody at the facility is eligible to receive education funding calculated as follows:

(a) Before the end of each fiscal year, the facility shall compile the following information by school district:

(i) the number of youth detained in the facility over 9 consecutive days during the prior year; and

(ii) the total number of days the youth in subsection (2)(a)(i) were detained.

(b) The facility shall calculate the school district's obligation for educational services by multiplying the number of youth detained and the total number of days detained as provided in subsection (2) by \$20 a day for each youth. The calculation must be sent to the school district no later than June 30. The school district shall transmit the amount calculated to the county treasurer of the county where the facility is located no later than July 15.

(c) The funds are to be used by the county for educational services provided by certified personnel in the detention facility located in the county and is subject to the requirements of Title 7, chapter 6, part 23.

History: En. Sec. 6, Ch. 799, L. 1991; Sec. 41-5-814, MCA 1995; redes. 41-5-1807 by Sec. 47, Ch. 286, L. 1997; amd. Sec. 6, Ch. 536, L. 1999.

Part 19

State Grants for Youth Detention Services

41-5-1901. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Attendant care" means the direct supervision of youth by a trained attendant in a physically unrestricting setting.

(2) "Board" means the board of crime control provided for in 2-15-2006.

(3) "County" means a county, city-county consolidated government, or a youth detention region created pursuant to 41-5-1805.

(4) "Home detention" means the use of a youth's home for the purpose of ensuring the continued custody of the youth pending adjudication or final disposition of his case.

(5) "Plan" means a county plan for providing youth detention services as required in 41-5-1903.

(6) "Secure detention" means the detention of youth in a physically restricting facility designed to prevent a youth from departing at will.

(7) "Youth detention service" means service for the detention of youth in facilities separate from adult jails. The term includes the services described in 41-5-1902.

History: En. Sec. 7, Ch. 799, L. 1991; Sec. 41-5-1001, MCA 1995; redes. 41-5-1901 by Sec. 47, Ch. 286, L. 1997.

41-5-1902. State grants to counties. (1) Within the limits of available funds, the board shall provide grants in accordance with 41-5-1903 through 41-5-1905 to assist counties in establishing and operating youth detention services, including but not limited to youth detention facilities, short-term detention centers, holdovers, attendant care, home detention, and programs for the transportation of youth to regional detention facilities.

(2) Grants available under subsection (1) consist of state appropriations and federal funds received by the board for the purpose of administering 41-5-1901 through 41-5-1905.

History: En. Sec. 8, Ch. 799, L. 1991; Sec. 41-5-1002, MCA 1995; redes. 41-5-1902 by Sec. 47, Ch. 286, L. 1997.

41-5-1903. Application for grants -- county plans -- obligation of counties receiving grants -- review and monitoring. (1) In order to receive funds under 41-5-1902, a county shall submit an application to the board in a manner and form prescribed by the board.

(2) The application must include a written plan for providing youth detention services in the county. Each plan must include:

(a) an assessment of the need for services;

(b) a description of services to be provided, including alternatives to secure detention;

(c) the estimated number of youth who will receive services;

(d) criteria for the placement of youth in secure detention; and

(e) a budget describing proposed expenditures for youth detention services.

(3) If the application and plan are approved by the board, the county may receive a grant in the amount provided for in 41-5-1904.

(4) As a condition of receiving funds under 41-5-1902, each county shall, within a reasonable period of time, comply or substantially comply with state law and policies contained in the Montana Youth Court Act concerning the detention and placement of youth.

(5) The board shall periodically review and monitor counties receiving grants under 41-5-1902 to assure compliance or substantial compliance with the Montana Youth Court Act, as required under subsection (4). If, after notice and fair hearing, the board determines that a county is not in compliance or substantial compliance with the Montana Youth Court Act, the board shall terminate the grant to the county.

History: En. Sec. 9, Ch. 799, L. 1991; Sec. 41-5-1003, MCA 1995; redes. 41-5-1903 by Sec. 47, Ch. 286, L. 1997.

41-5-1904. Distribution of grants -- limitation of funding -- restrictions on use. (1) The board shall award grants on an equitable basis, giving preference to services that are to be used on a regional basis.

(2) The board shall award grants to eligible counties:

(a) in a block grant in an amount not to exceed 50% of the approved, estimated cost of secure detention; or

(b) on a matching basis in an amount not to exceed:

(i) 75% of the approved cost of providing holdovers, attendant care, and other alternatives to secure detention, except for shelter care. Shelter care costs must be paid as provided by law.

(ii) 50% of the approved cost of programs for the transportation of youth to appropriate detention or shelter care facilities, including regional detention facilities.

(3) Based on funding available after the board has funded block grants under subsection (2), the board shall, in cases of extreme hardship in which the transfer of youth court cases to the adult system has placed considerable financial strain on a county's resources, award grants to eligible counties to fund up to 75% of the actual costs of secure detention of youth awaiting transfer. Hardship cases will be addressed at the end of the fiscal year and will be awarded by the board based upon a consideration of the applicant county's past 3 years' expenditures for youth detention and upon consideration of the particular case or cases that created the hardship expenditure for which the hardship grant is requested.

(4) Grants under 41-5-1902 may not be used to pay for the cost of youth evaluations. The cost of evaluations must be paid as provided for in 41-5-1503.

History: En. Sec. 10, Ch. 799, L. 1991; amd. Sec. 1, Ch. 8, L. 1995; amd. Sec. 50, Ch. 550, L. 1997; Sec. 41-5-1004, MCA 1995; redes. 41-5-1904 by Sec. 47, Ch. 286, L. 1997.

41-5-1905. Allocation of grants. (1) Each fiscal year, the board shall allocate grants under 41-5-1902 for distribution to eligible counties based upon:

(a) the relative population of youth residing in geographical areas of the state, as determined by the board; and

(b) the estimated cost of youth detention services in each county eligible for funding under 41-5-1902.

(2) A county is not automatically entitled to receive a grant from funds available under 41-5-1902.

History: En. Sec. 11, Ch. 799, L. 1991; Sec. 41-5-1005, MCA 1995; redes. 41-5-1905 by Sec. 47, Ch. 286, L. 1997.

41-5-1906. Amendment of state plan. The board shall amend the state plan required under section 223 of the federal Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5633), to reflect the contents of approved county plans for providing youth detention services.

History: En. Sec. 12, Ch. 799, L. 1991; Sec. 41-5-1006, MCA 1995; redes. 41-5-1906 by Sec. 47, Ch. 286, L. 1997.

41-5-1907. Compliance with federal requirements. The board shall administer federal funds available under section 222 of the federal Juvenile Justice and Delinquency Prevention Act of 1974, as amended (42 U.S.C. 5632), in compliance with the requirements of 42 U.S.C. 5633(a)(21) and 42 U.S.C. 5674.

History: En. Sec. 13, Ch. 799, L. 1991; Sec. 41-5-1007, MCA 1995; redes. 41-5-1907 by Sec. 47, Ch. 286, L. 1997.

41-5-1908. Rulemaking authority. The board may adopt rules necessary to implement the provisions of 41-5-1805 and 41-5-1901 through 41-5-1908 and to establish requirements for approved holdovers consistent with the definition of holdover provided in 41-5-103.

History: En. Sec. 14, Ch. 799, L. 1991; amd. Sec. 192, Ch. 42, L. 1997; amd. Sec. 51, Ch. 550, L. 1997; Sec. 41-5-1008, MCA 1995; redes. 41-5-1908 by Sec. 47, Ch. 286, L. 1997.

Part 20

Juvenile Delinquency Intervention Act

41-5-2001. Short title. This part may be cited as the "Juvenile Delinquency Intervention Act".

History: En. Sec. 12, Ch. 587, L. 2001.

41-5-2002. Purpose. The purposes of this part are to:

- (1) provide an alternate method of funding juvenile placement and services;
- (2) increase the ability of local government to respond to juvenile delinquency through early intervention and expanded community alternatives; and
- (3) enhance the ability of local government to control costs.

History: En. Sec. 13, Ch. 587, L. 2001.

41-5-2003. Establishment of program -- department duties. (1) (a) There is a juvenile delinquency intervention program.

(b) Participation in the juvenile delinquency intervention program is voluntary.

(2) The department and the youth court shall monitor the youth court's account created under 41-5-130 to ensure that the youth court does not exceed its allocated account budget.

(3) Account funds not used by the youth court for placements must be distributed to participating youth courts in accordance with rules adopted by the department to be used for placement alternatives and early intervention alternatives.

(4) The department shall provide technical assistance to each youth court for the monitoring of account funds and the evaluation and development of placement alternatives and effective intervention programming.

(5) The department shall review and monitor each youth court to enable the development of placement alternatives by the youth courts and the development of early intervention alternatives by the youth courts. The department shall report to the legislature on the results of its monitoring.

History: En. Sec. 14, Ch. 587, L. 2001.

41-5-2004. Youth court duties. Each youth court shall:

(1) use available resources to develop alternatives for the placement of youth;

(2) use available resources for early intervention strategies for troubled youth;

(3) use a risk assessment instrument approved by the department for the measurement of risk assessment and effectiveness of treatment or intervention for youth adjudicated pursuant to 41-5-1512 or 41-5-1513;

(4) submit quarterly reports to the department documenting the use of diversionary and prevention programs and the use of placement services;

(5) participate in the cost containment review panel established under 41-5-131;

and

(6) provide the department and the legislative auditor with access to all records maintained by the youth court.

History: En. Sec. 15, Ch. 587, L. 2001.

41-5-2005. Judicial districts participating in juvenile delinquency intervention program -- youth placement committee to submit recommendation to

department -- acceptance or rejection of recommendation by department. (1) Prior to commitment of a youth to the custody of the youth court or to the department pursuant to 41-5-1512 or 41-5-1513, a youth placement committee must be convened. The committee shall submit in writing to the youth court judge its primary and alternative recommendations for placement of the youth.

(2) The committee shall first consider placement of the youth in a community-based facility or program and shall give priority to placement of the youth in a facility or program located in the state of Montana.

(3) If in-state alternatives for placement of the youth are inappropriate, the committee may recommend an out-of-state placement. The committee shall state in its recommendation the reasons why in-state services are not appropriate.

(4) The primary and alternative recommendations of the youth placement committee must be for similar facilities or programs. The youth court may require a youth placement committee to reevaluate a youth if the recommended placements are dissimilar.

(5) If the youth court rejects both of the committee's recommendations, it shall promptly notify the committee in writing of the reasons for rejecting the recommendations and shall make an appropriate placement for the youth.

(6) The youth court may not order a placement or change of placement that results in a deficit in the account established for that district under 41-5-130 without approval from the cost containment review panel.

(7) The youth court shall evaluate the cost of the placement or change of placement and ensure that the placement or change of placement will not overspend the budget allocation provided by the department under 41-5-130.

(8) This section applies only to those judicial districts that elect to participate in the juvenile delinquency intervention program administered by the department.

History: En. Sec. 16, Ch. 587, L. 2001.

41-5-2006. Rulemaking authority. (1) The department shall adopt rules necessary for the implementation of 41-5-130 through 41-5-132 and this part, including but not limited to:

(a) defining and establishing criteria for early intervention regarding troubled youth and the development of community alternatives;

(b) evaluating each youth court to ensure that the court is using early intervention strategies and community alternatives and is effectively controlling costs for youth placements;

(c) distributing unused account funds to the youth courts;

(d) determining the allocation of funds to the accounts for the youth courts;

(e) determining the amount of funds to be withheld by the department as cost containment funds;

(f) monitoring and auditing each youth court to ensure that account funds are being used as required by law;

- (g) distributing cost containment funds to youth courts;
- (h) monitoring youth courts to promote consistency and uniformity in the placement of juvenile offenders;
- (i) developing procedures for the operation of the cost containment review panel;
- (j) developing one or more risk assessment tools; and
- (k) developing procedures for removing youth with serious mental illness from the juvenile correctional system.

(2) It is the intent of the legislature that rules adopted by the department encourage the use of local, regional, and state resources for the placement of troubled youth.

History: En. Sec. 18, Ch. 587, L. 2001.

Parts 21 through 24 reserved

Part 25 Criminally Convicted Youth Act

41-5-2501. Short title. This part may be cited as the "Criminally Convicted Youth Act".

History: En. Sec. 17, Ch. 532, L. 1999.

41-5-2502. Purpose. The criminally convicted youth act must be interpreted and construed to effectuate the following express legislative purposes:

- (1) to protect the public;
- (2) to hold youth who commit offenses that may be filed directly in district court pursuant to 41-5-206 accountable for their actions;
- (3) to provide for the custody, assessment, care, supervision, treatment, education, rehabilitation, and work and skill development of youth convicted in district court; and
- (4) to comply with the legislative purposes set forth in 41-5-102.

History: En. Sec. 18, Ch. 532, L. 1999.

41-5-2503. Disposition of criminally convicted youth. (1) The district court, in sentencing a youth adjudicated in district court pursuant to 41-5-206, shall:

- (a) impose any sentence allowed by the statute that established the penalty for the offense of which the youth is convicted as if the youth were an adult and any conditions or restrictions allowed by statute;

(b) retain jurisdiction over the case until the criminally convicted youth reaches the age of 21;

(c) order the department to submit a status report to the court, county attorney, defense attorney, and juvenile probation officer every 6 months until the youth attains the age of 21. The report must include a recommendation from the department regarding the disposition of the criminally convicted youth.

(2) The district court shall review the criminally convicted youth's sentence pursuant to 41-5-2510 before the youth reaches the age of 21 if a hearing has not been requested under 41-5-2510.

History: En. Sec. 19, Ch. 532, L. 1999.

41-5-2504 through 41-5-2509 reserved.

41-5-2510. Sentence review hearing. (1) When a youth has been convicted as an adult pursuant to the provisions of 41-5-206, except for offenses punishable by death or life imprisonment or when a sentence of 100 years could be imposed, the county attorney, defense attorney, or youth may, at any time before the youth reaches the age of 21, request a hearing to review the sentence imposed on the youth. The department shall notify the court of the youth's impending birthday no later than 90 days before the youth's 21st birthday.

(2) After reviewing the status report and upon motion for a hearing, the court shall determine whether to hold a criminally convicted youth sentence review hearing. If the court, in its discretion, determines that a sentence review hearing is warranted or is required under 41-5-2503, the hearing must be held within 90 days after the filing of the request or determination. The sentencing court or county attorney shall notify the victim of the offense pursuant to Title 46, chapter 24.

(3) The sentencing court shall review the department's records, youth court records, victim statements, and any other pertinent information.

(4) The sentencing court, after considering the criminal, social, psychological, and any other records of the youth; any evidence presented at the hearing; and any statements by the victim and by the parent or parents or guardian of the youth and any other advocates for the youth shall determine whether the criminally convicted youth has been substantially rehabilitated based upon a preponderance of the evidence.

(5) In the event that the sentencing court determines that the youth has been substantially rehabilitated, the court shall determine whether to:

(a) suspend all or part of the remaining portion of the sentence, impose conditions and restrictions pursuant to 46-18-201, and place the youth on probation under the direction of the department, unless otherwise specified;

(b) impose all or part of the remaining sentence and make any additional recommendations to the department regarding the placement and treatment of the criminally convicted youth; or

(c) impose a combination of options allowed under subsections (5)(a) and (5)(b), not to exceed the total sentence remaining.

(6) The sentencing court may revoke a suspended sentence of a criminally convicted youth pursuant to 46-18-203.

History: En. Sec. 20, Ch. 532, L. 1999.

APPENDIX E - OTHER PERTINENT MCA

Other Pertinent MCA

41-5-103 (29) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned.

45-8-361. Possession or allowing possession of weapon in school building -- exceptions -- penalties -- seizure and forfeiture or return authorized -- definitions.

(1) A person commits the offense of possession of a weapon in a school building if the person purposely and knowingly possesses, carries, or stores a weapon in a school building.

(2) A parent or guardian of a minor commits the offense of allowing possession of a weapon in a school building if the parent or guardian purposely and knowingly permits the minor to possess, carry, or store a weapon in a school building.

(3) (a) Subsection (1) does not apply to law enforcement personnel.

(b) The trustees of a district may grant persons and entities advance permission to possess, carry, or store a weapon in a school building.

(4) (a) A person convicted under this section shall be fined an amount not to exceed \$500, imprisoned in the county jail for a term not to exceed 6 months, or both. The court shall consider alternatives to incarceration that are available in the community.

(b) (i) A weapon in violation of this section may be seized and, upon conviction of the person possessing or permitting possession of the weapon, may be forfeited to the state or returned to the lawful owner.

(ii) If a weapon seized under the provisions of this section is subsequently determined to have been stolen or otherwise taken from the owner's possession without permission, the weapon must be returned to the lawful owner.

(5) As used in this section:

(a) "school building" means all buildings owned or leased by a local school district that are used for instruction or for student activities. The term does not include a home school provided for in [20-5-109](#).

(b) "weapon" means any type of firearm, a knife with a blade 4 or more inches in length, a sword, a straight razor, a throwing star, nun-chucks, or brass or other metal knuckles. The term also includes any other article or instrument possessed with the purpose to commit a criminal offense.

History: En. Sec. 1, Ch. 435, L. 1997; amd. Sec. 6, Ch. 581, L. 1999.